ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on May 3, 1993. See **tentative** agenda on pages 2371-2373 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - May 3, 1993 @ 2 P.M.
Room 131, Capitol Annex

OFFICE OF THE GOVERNOR

Executive Branch Ethics Commission

9 KAR 1:010 & E. Statement of financial disclosure.
9 KAR 1:020 & E. Complaints.
9 KAR 1:030 & E. Hearings.

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12 KAR 1:060. Manner of labelling seed, seedlings, or finished plants. (Deferred from April)
12 KAR 1:065. Lawn, turf mixtures; labeling. (Deferred from April)
12 KAR 1:075. Types of labeling; tag label form. (Deferred from April)
12 KAR 1:080. Use of own tags; permit, report. (Deferred from April)
12 KAR 1:085. Illegal labeling and sales. (Deferred from April)
12 KAR 1:090. Stop sale orders. (Deferred from April)
12 KAR 1:095. Impound seed, tobacco seedlings or finished tobacco plants. (Deferred from April)
12 KAR 1:100. Records. (Deferred from April)
12 KAR 1:105. Schedule of charges. (Deferred from April)

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Information Systems

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Ad Valorem Tax; State Assessment

103 KAR 5:150 & E. Procedures for the removal of a property valuation administrator from office.

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105 KAR 1:170. Membership form requirements.
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200 KAR 6:045 & E. Control of smoking in state-owned buildings and leased space occupied by executive branch agencies. (Not Amended After Hearing)

Kentucky Workers Compensation Funding Commission

200 KAR 19:020. Assessments of insurance policies offering deductibles. (Not Amended After Hearing) (Deferred from April)

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201 KAR 18:180 & E. Firm registration. (Deferred from February)
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Kentucky Real Estate Appraisers Board

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201 KAR 30:040. Standards of practice administrative regulations. (Amended After Hearing)
201 KAR 30:050. Examination, education and experience requirement. (Amended After Hearing)
201 KAR 30:060. Fees administrative regulation. (Amended After Hearing)
201 KAR 30:070. Prehearing procedure. (Amended After Hearing)
201 KAR 30:080. Hearings. (Amended After Hearing)
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Department of Agriculture

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302 KAR 31:030. Fine schedule for violation of KRS 217B.550. (Deferred from April)
302 KAR 31:035. Fine schedule for violation of KRS 217B.120. (Deferred from April)

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501 KAR 3:040. Personnel. (Deferred from March) (Amended at April ARRS Meeting)
501 KAR 3:050. Physical plant. (Deferred from March) (Amended at April ARRS Meeting)
501 KAR 3:060. Security; control. (Deferred from March)
501 KAR 3:090. Medical services. (Deferred from March)
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501 KAR 3:120. Admission; release. (Deferred from March)
501 KAR 3:130. Inmate programs; services. (Deferred from March)
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Ninety-Six Hour Local Confinement Facilities

501 KAR 4:010. Definitions. (Deferred from March)
501 KAR 4:040. Personnel. (Deferred from March)
501 KAR 4:050. Physical plant. (Deferred from March)
501 KAR 4:060. Security; control. (Deferred from March)
501 KAR 4:070. Safety; emergency procedures. (Deferred from March)
501 KAR 4:100. Food services. (Deferred from March)
501 KAR 4:120. Admission; release. (Deferred from March)
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Twelve Hour Local Confinement Facilities

501 KAR 5:001. Repeal of 501 KAR Chapter 5. (Deferred from March)

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501 KAR 6:020. Corrections policies and procedures.
501 KAR 6:030. Kentucky State Reformatory.
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501 KAR 6:090 & E. Frankfort Career Development Center.
501 KAR 6:110 & E. Roederer Correctional Complex.
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Restricted Custody Center

501 KAR 7:040. Personnel. (Deferred from March)
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Direct Supervision for Full Service Jails

501 KAR 10:010. Definitions. (Deferred from March)
501 KAR 10:020. Administration; management. (Deferred from March)
501 KAR 10:030. Fiscal management. (Deferred from March)
501 KAR 10:040. Personnel. (Deferred from March)
501 KAR 10:050. Physical plant. (Deferred from March)
501 KAR 10:060. Security; control. (Deferred from March)
501 KAR 10:070. Safety; emergency procedures. (Deferred from March)
501 KAR 10:080. Sanitation; hygiene. (Deferred from March)
501 KAR 10:090. Medical services. (Deferred from March)
501 KAR 10:100. Food services. (Deferred from March)
501 KAR 10:110. Classification. (Deferred from March)
501 KAR 10:120. Admission; release. (Deferred from March)
501 KAR 10:130. Inmate programs; services. (Deferred from March)
501 KAR 10:140. Inmate rights. (Deferred from March)

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Division of Highways

Traffic

603 KAR 5:070. Motor vehicle dimension limits.

Motor Vehicle Commission

605 KAR 1:130. Procedures.

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Department of Education

Education Professional Standards Board

704 KAR 20:120. Emergency Certification.
704 KAR 20:198. Director of special education.
704 KAR 20:320. Beginning teacher internship program.
704 KAR 20:510. Recruitment plan for teachers of exceptional children.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation

Administration
781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals

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805 KAR 4:010. Licensing and classification of blasters.
805 KAR 4:070. Definitions.

Department of Insurance

General Provisions
806 KAR 1:010. Liability self-insurance groups.
Health Insurance Contracts
806 KAR 17:090. Preauthorization requirements for coverage of temporomandibular joint disorder and evaluation of medical necessity for treatment of craniomandibular jaw disorder.
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806 KAR 30:090. Insurance premium finance company proof of mailing of cancellation notice.
806 KAR 30:100. Time limit for insurance premium finance company responses to Department of Insurance inquiries.

Kentucky Racing Commission

Thoroughbred Racing
810 KAR 1:030 & E. Simulcast facilities. (Deferred from April)

Department of Housing, Buildings and Construction

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815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.
815 KAR 20:050. Installation permits.
815 KAR 20:120. Water supply and distribution. (Deferred from April)

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Department for Health Services

Health Services and Facilities
902 KAR 20:073. Clinics: ambulatory care. (Not Amended After Hearing)
902 KAR 20:291. Alzheimer's nursing homes. (Amended After Hearing)

Department for Employment Services

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903 KAR 5:290 & E. Employer contribution rates.

Department for Medicaid Services

Medicaid Services
907 KAR 1:016 & E. Psychiatric hospital services.
907 KAR 1:031 & E. Payments for home health services. (Not Amended After Hearing)
907 KAR 1:428. Incorporation by reference of the adult day care services manual.
907 KAR 1:505 & E. Psychiatric residential treatment facility services.
907 KAR 1:512 & E. Incorporation by reference of the psychiatric residential treatment facility services manual.

Department for Mental Health and Mental Retardation Services

Substance Abuse
908 KAR 1:310. Administrative procedures for DUI facilities and programs.

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
9 KAR 1:010E

An emergency administrative regulation is required in order to immediately implement KRS Chapter 11A and to ensure financial disclosure by the affected class of executive branch employees as defined in the statute, as soon as possible. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on or before March 10, 1993.

BRERETON C. JONES, Governor
LIVINGSTON TAYLOR, Chairman

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:010E. Statement of financial disclosure.

RELATES TO: KRS 11A.050
STATUTORY AUTHORITY: KRS 11A.010(7), (9)(a)-(i), 11A.050
EFFECTIVE: March 17, 1993
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 17, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
9 KAR 1:020E

An emergency administrative regulation is required in order to immediately implement KRS Chapter 11A to provide for the handling of complaints. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on or before March 10, 1993.

BRERETON C. JONES, Governor
LIVINGSTON TAYLOR, Chairman

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:020E. Complaints.

RELATES TO: KRS 11A.080
STATUTORY AUTHORITY: KRS 11A.080
EFFECTIVE: March 17, 1993
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 17, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
9 KAR 1:030E

An emergency administrative regulation is required in order to immediately implement KRS Chapter 11A to provide for the hearing process which may result from a complaint. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on or before March 10, 1993.

BRERETON C. JONES, Governor
LIVINGSTON TAYLOR, Chairman

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:030E. Hearings.

RELATES TO: KRS 11A.100
STATUTORY AUTHORITY: KRS 11A.080, 11A.100

EFFECTIVE: March 17, 1993
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 17, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
103 KAR 5:150E

This emergency administrative regulation, which is filed under the provisions of KRS 13A.190, establishes the procedures for the removal of a property valuation administrator from office. The promulgation of a procedural regulation is required by statute. KRS 13A.100 provides that an administrative body shall prescribe by regulation the procedures to be utilized by the administrative body in disciplinary proceedings. KRS 13A.140(4) further provides that no administrative body shall issue standards or by any other name issue a document of any type where an administrative regulation is required by law. The immediate implementation of this regulation is necessary to enable the Secretary of the Revenue Cabinet to properly remove any property valuation administrator who engages in the proscribed conduct prior to the date the ordinary regulation is adopted and becomes effective and to ensure that procedural due process is afforded to any property valuation administrator whose removal may be sought during the interim period. This emergency regulation shall be replaced by an ordinary administrative regulation. This ordinary administrative regulation was filed with the Regulations Compiler on March 11, 1993.

BRERETON C. JONES, Governor
KIM BURSE, Secretary

REVENUE CABINET
Department of Administrative Services

103 KAR 5:150E. Procedures for the removal of a property valuation administrator from office.

RELATES TO: KRS 132.370
STATUTORY AUTHORITY: KRS 13A.100, 132.370
EFFECTIVE: March 26, 1993
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 26, 1993 at 2 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:090E

In order to continue to operate the Roederer Correctional Complex in accordance with KRS Chapter 196, the institution needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected policies must be implemented immediately as the institution is to undergo a national accreditation audit on March 29, 1993, and the policies must be brought in line to meet the American Correctional Accreditation Standards. This emergency regulation shall be replaced by the ordinary administrative regulations filed with LRC on March 15, 1993 in accordance with KRS Chapter 13A.

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

DEPARTMENT OF CORRECTIONS

501 KAR 6:090E. Frankfort Career Development Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: March 26, 1993

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 26, 1993 at 3 p.m.

STATEMENT OF EMERGENCY

501 KAR 6:110E

In order to continue to operate the Roederer Correctional Complex in accordance with KRS Chapter 196, the institution needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected policies must be implemented immediately as the institution is to undergo a national accreditation audit on March 29, 1993, and the policies must be brought in line to meet the American Correctional Accreditation Standards. This emergency regulation will be replaced by the ordinary administrative regulations filed with LRC on March 15, 1993 in accordance with KRS Chapter 13A.

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

DEPARTMENT OF CORRECTIONS

501 KAR 6:110E. Roederer Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: March 26, 1993
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 26, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
806 KAR 3:150E

This emergency administrative regulation provides that insurers required to file quarterly financial statements with the Department of Insurance use the quarterly statement forms and instructions prescribed by the National Association of Insurance Commissioners ("NAIC"). The Kentucky Department of Insurance will be undergoing review for accreditation under the NAIC's Financial Regulation Accreditation Standards in the very near future. One of the accreditation standards is that the Kentucky Department of Insurance must have promulgated an administrative regulation substantially identical to the NAIC's model regulation to define standards and commissioner's authority for companies deemed to be in hazardous financial condition. 806 KAR 3:150, promulgated in 1991, meets this standard. However, the current version of the regulation refers to outdated forms and instructions for quarterly financial statements. The proposed amendment refers to the current forms and instructions. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on April 15 , 1993.

BRERETON C. JONES, Governor
DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 3:150E. Standards for insurers deemed to be in hazardous financial condition.

RELATES TO: KRS 304.3-200, 304.33-140
STATUTORY AUTHORITY: KRS 304.2-110
EFFECTIVE: April 15, 1993
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes standards which the Commissioner of Insurance may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to policyholders, creditors, or the public.

Section 1. Definitions. [~~As used in this regulation:~~] (1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance; and

(2) "Insurer" means any of the entities listed in KRS 304.33-020.

Section 2. Standards. One (1) or more of the following standards may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in Kentucky may be deemed to be hazardous to policyholders, creditors, or to the general public:

(1) Adverse findings reported in financial condition or market conduct examination reports;

(2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(4) Whether the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

(5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(6) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, such as net capital gain or loss, change in nonadmitted assets, or cash dividends paid to shareholders, is greater than fifty (50) percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;

(8) Any contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in transmission or payment of net premiums to the insurer;

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in that position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false

or misleading information concerning an inquiry;

(13) Whether management of an insurer either has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

(15) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

Section 3. Corrective Action. (1) For the purposes of making a determination of an insurer's financial condition under this regulation, the commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken with the next twelve (12) month period.

(2) If the commissioner determines that the continued operation of the insurer in Kentucky may be hazardous to policyholders, creditors, or to the general public, the commissioner may, upon his determination, issue an order requiring the insurer to:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) Reduce, suspend, or limit the volume of business being accepted or renewed;

(c) Reduce general insurance and commission expenses by specified methods;

(d) Increase the insurer's capital and surplus;

(e) Suspend or limit the declaration and payment of dividends by an insurer to stockholders or policyholders;

(f) File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;

(g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) Document the adequacy of premium rates in relation to the risks insured; or

(i) File, in addition to regular annual statements, interim financial reports in the form of and pursuant to the instructions for the quarterly statements prescribed by the National Association of Insurance Commissioners (life and accident and health and fire and casualty, as revised in 1993 [~~1990~~], incorporated by reference and available for inspection and copying at [~~from~~] the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-2807 [~~1875~~], 8 a.m. - 4:30 p.m. (ET)), weekdays.

(3) Any insurer subject to an order under subsection (2) of this section may request a hearing to review the order. The hearing, and judicial review thereof, shall be conducted as provided in KRS 304.2.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 22, 1993
FILED WITH LRC: April 15, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
806 KAR 3:180E

This emergency administrative regulation requires insurers to complete their annual financial statements according to instructions issued by the National Association of Insurance Commissioners ("NAIC"). The Kentucky Department of Insurance will be undergoing review for accreditation under the NAIC's Financial Regulation Accreditation Standards in the very near future. The requirement that financial statements be completed according to instructions issued by the NAIC is one of the standards which the Kentucky Department of Insurance is required to meet. Since there is no statute or regulation which specifically states that financial statements must be completed according to instructions issued by the NAIC, this emergency administrative regulation is being promulgated to make it clear that NAIC instructions must be followed in completing financial statements. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on April 15, 1993.

BRERETON C. JONES, Governor
DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 3:180E. Instructions for insurer financial statements.

RELATES TO: KRS 304.3-240
STATUTORY AUTHORITY: KRS 304.2-110
EFFECTIVE: April 15, 1993
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation requires insurers to complete annual financial statements according to instructions issued by the National Association of Insurance Commissioners.

Section 1. Insurers shall complete annual financial statements according to the National Association of Insurance Commissioners Annual Statement Instructions, Life and Health (December, 1992), and Annual Statement Instructions, Property and Casualty (December, 1992), both incorporated by reference and available for inspection and copying from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 22, 1993
FILED WITH LRC: April 15, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
903 KAR 5:290E

Under KRS Chapter 13A, the administrative body is required to implement this regulation in order to have sufficient authority to establish 1993 contribution rates for Kentucky employers under the Unemployment Insurance Program. These rates are spelled out in 903 KAR 5:290 and per KRS 341.270, and predicated on the trust fund balance as of December 31 of any calendar year. An emergency regulation is needed because this information is necessary in assigning rates for first quarter, 1993 contribution reports which are

due before promulgation of regulation through the normal process could occur. This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. The ordinary administrative regulation will be filed with the Regulations Compiler on or before the effective date of the emergency administrative regulation.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance

903 KAR 5:290E. Employer contribution rates.

RELATES TO: KRS 341.270
STATUTORY AUTHORITY: KRS 194.050, 341.270
EFFECTIVE: March 17, 1993
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 17, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being amended to provide that prospective acute care and rehabilitation hospital payment rates for a limited time will be set at the rates (and using the same upper limits) that were in effect for the period January 1, 1992 through December 31, 1992. In addition, the regulation is amended to show that provider taxes will not be considered allowable cost and to clarify current policy by specifying that additional hospital indigent care assurance program (HICAP) funds may be reserved to meet budgetary needs. This action must be taken on an emergency basis to decrease expenditures and conserve scarce Medicaid resources in a timely manner. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 10, 1992 as this regulation proposes to set rates for the period beginning April 1, 1993 and ending December 31, 1993 at the rates that were in effect for the period January 1, 1992 through December 31, 1992, shows that provider taxes are not allowable cost, and clarifies policy by showing that additional HICAP funds may be reserved to meet budgetary necessities. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about April 1, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575, 1992 Acts c. 462, Part I.G.52.b.2
STATUTORY AUTHORITY: KRS 194.050, 1992 Acts c. 462, Part I.G.52.b.2., 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4
EFFECTIVE: March 31, 1993
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments. This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. Except as specified in Section 5 of this administrative regulation, the policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual"

revised April 1, 1993 [~~July 1, 1992~~], which is incorporated by reference in this administrative regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. General Description of the Payment System. Except as specified in Section 5 of this administrative regulation the following provisions shall be applicable for purposes of setting inpatient hospital payment rates.

(1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be peer grouped according to bed size. The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall not be peer grouped but shall have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1991.

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1. For acute care hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. Effective with regard to payments for the quarter ending June 30, 1992 and thereafter, the HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the amounts remaining, from the hospital assessments paid, for distribution to hospitals after exclusion of appropriate amounts for administrative expense, the contingency reserve amount, and amounts reserved for other program needs in accordance with budget commitments, obligations, and appropriations, or other budgetary necessity, and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D(b)(2), (3), (4), and (5). No hospital participating in HICAP shall receive on an annual basis less than five and one-quarter (5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 4. Payments to Participating Out-of-state Hospitals. This section shall be effective except as specified in Section 5 of this administrative regulation.

(1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate

share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission. participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 5. Special Payment Rates and Upper Limits Period. For the period beginning on April 1, 1993 and ending on December 31, 1993 acute care and rehabilitation hospital payment rates and upper limits shall be the same rates (including necessary adjustments for audits or other purposes) and upper limits as the rates and upper limits in effect for the rate period of January 1, 1992 through December 31, 1992.

Section 6. The changes shown in this administrative regulation shall be effective with regard to services provided on or after April 1, 1993.

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: March 19, 1993
FILED WITH LRC: March 31, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:016E

This emergency administrative regulation is being amended to clearly show that psychiatric hospital services are provided on a time-limited basis. This action must be taken on an emergency basis to conserve scarce state resources. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about March 1, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:016E. 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
EFFECTIVE: March 26, 1993
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: March 26, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:505E

This emergency administrative regulation is being revised to make a policy clarification with regard to hearings criteria for psychiatric residential treatment facility services. This action must be taken on an emergency basis to conserve scarce state resources. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about March 1, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:505E. 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
EFFECTIVE: March 26, 1993
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid program [~~of Medical Assistance~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth 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: March 26, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:512E

This emergency administrative regulation is being implemented to establish agency policy with regard to psychiatric residential treatment facility services. This action must be taken on an emergency basis to implement the program on a timely basis and conserve scarce resources. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about March 1, 1993.

BRERETON C. JONES, Governor
FONTAINE BANKS, JR., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:512E. 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
EFFECTIVE: March 26, 1993
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 26, 1993 at 9 a.m.

REGULATIONS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its April, 1993 meeting unless otherwise noted.

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:090. Permanent committees, registration and fees.

RELATES TO: KRS 121.170(5)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: KRS 121.170(5) requires that a permanent committee pay an administrative fee of $200 no later than the last day of the calendar quarter following the year in which it registers with the registry and each succeeding year thereafter until it terminates. It is necessary to promulgate this administrative regulation to establish a procedure to be followed by the Registry of Election Finance and permanent committee.

Section 1. Definitions. "Permanent committee" shall have the meaning prescribed by KRS **121.015(3)(c)** [~~121.015(6)~~], and shall include all permanent committees, whether instate **or** [~~,~~] out-of-state, **except that it shall not include** [~~or~~] federally registered out-of-state permanent committees.

Section 2. **(1) Existing permanent committees, reregistration. Not later than July 1, 1993, each permanent committee in existence as of the effective date of this administrative regulation shall file form KREF 92-010 (Political Committee Registration) with the Registry of Election Finance. The registration form shall be accompanied by the $200 administrative fee required by KRS 121.170(5). Not later than the last day of the first calendar quarter of the year following the year in which the registration is filed, a permanent committee shall renew its registration by filing form KREF 93-010R (Political Committee Registration/Renewal) with the registry, which shall be accompanied by the $200 annual administrative fee, and shall do so each year until the committee terminates.**

(2) New permanent committees. A permanent committee shall file its initial registration by filing form KREF 92-010 (Political Committee Registration) with the Registry, accompanied by the $200 fee required by KRS 121.170(5), and shall subsequently renew its registration as provided in subsection (1) of this section. [~~Administrative Fee, Schedule for Payment. (1) An instate or out of state permanent committee registered with the Registry of Election Finance as of December 31, 1992, shall pay the $200 administrative fee required by KRS 121.170(5) no later than March 31, 1993, and shall pay the fee annually no later than March 31 of each succeeding year until the permanent committee terminates.~~

~~(2) A federally registered out of state permanent committee which had filed a copy of its Federal Election Commission Form 1 Committee Registration Form with the registry as of December 31, 1992, shall pay the $200 administrative fee no later than March 31, 1993. For each succeeding year, a federally registered out of state permanent committee shall pay the fee no later than the last day of the first calendar quarter following the year in which it files a copy of its Federal Election Commission Form 1 Committee Registration Form with the Registry.~~]

Section 3. Fee Payment. The registry shall advise each permanent committee as to the date on which its administrative fee is due. Payment shall be made by check payable to the Kentucky State Treasurer and shall be sent to the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

Section 4. Material Incorporated by Reference. Forms KREF 92-010 (Political Committee Registration) and KREF 93-010R (Political Committee Registration/Renewal) are 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, between the hours of 8 a.m. and 4:30 p.m. local time.

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

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(As Amended)

104 KAR 1:010. Posting, distribution and availability of notices and pamphlets.

RELATES TO: KRS [~~Chapter~~] 344.190
STATUTORY AUTHORITY: KRS 13A.100, 344.190(14)
NECESSITY AND FUNCTION: **This administrative regulation is necessary to establish requirements for persons defined in KRS 344.010, 344.030, 344.130 and 344.367, to post, distribute and make available notices and pamphlets.** [~~This administrative regulation establishes the requirements governing the posting, distribution, and availability of notices by persons covered by KRS 344.010 to 344.500, 344.600 to 344.680 [344.450] and 344.990.~~]

Section 1. Equal [~~Fair~~] Employment Opportunity [~~Practices~~] Notices. (1) An [~~Every~~] employer, employment agency, licensing agency and labor organization [~~subject to KRS 344.010 to 344.500, 344.600 to 344.680 [344.450] and 344.990~~], shall post and maintain at its establishment equal [~~their establishments the fair~~] employment opportunity [~~practices~~] notices [~~incorporated by reference. "Fair Employment Practice Notice (February, 1992)" is incorporated by reference. It may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m~~].

(2) Equal [~~(1) Fair~~] employment opportunity [~~Practices~~] notices shall be posted **and shall** [~~so as to~~] be readily apparent to an employee [~~employees~~] and applicant[s] for employment. They shall be posted:

(a) In easily-accessible and well-lighted places; and

(b) At or near each location where the employee's services are performed.

(3) A [~~(2)~~] Labor organization[s] shall post "equal [~~fair~~] employment opportunity [~~practices~~]" notices [~~shall be posted~~] in easily-accessible and well-lighted places**. The notices shall** [~~so as to~~] be readily apparent to member[s] and an applicant[s] for membership.

Section 2. Public Accommodations Welcome Notice[s]. (1) An [~~Every~~] owner, lessee, proprietor, or manager of a [~~any~~] place of public accommodation, resort, or amusement, shall post and maintain at a [~~any~~] place of public accommodation, resort or amusement welcome notices. [~~the "Public Accommodation Notice". The "Public~~

~~Accommodation Notice (February, 1992)" is incorporated by reference. It may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

(2) Public accommodation welcome notices shall be posted where they may be readily observed by those seeking or granting any of the accommodations, advantages, facilities, or privileges of places of public accommodations, resort or amusement. [~~so as to be readily apparent to employees and applicants for employment. They shall be posted:~~

~~(a) In easily accessible and well lighted places; and~~

~~(b) At or near each location where the employee's services are performed.~~]

Section 3. Equal [~~Fair~~] Housing Opportunity Notices. (1) A [~~Every~~] person or business entity **engaged in an real estate or real estate-related transaction** [~~subject to KRS 344.360, [and] 344.367 and 334.600 to 344.680~~] shall post and maintain at each location [~~and elsewhere,~~] where [~~their~~] services are regularly performed, the equal [~~fair~~] housing opportunity notices [~~incorporated by reference. These notices may be obtained and copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m~~].

(2) Equal [~~opportunity~~] [~~Fair~~] housing **opportunity** notices shall be posted at each [~~every business~~] location [~~and elsewhere,~~] where services are regularly performed, in an easily-accessible and well-lighted place**. The notice shall** [~~so as to~~] be readily apparent to a person [~~all persons~~] seeking services.

Section 4. Fair Housing Law Pamphlets. A person or entity engaged in real estate or real estate-related transactions [~~and~~] [~~Notice to Owners Listing Property. Every real estate operator, real estate broker, real estate salesperson, financial institution, builder, developer and insurer~~] [~~subject to KRS 344.360, 344.367, 344.370 and 344.600 to 344.680~~] [~~344.010 to 344.450 and 344.990~~] shall provide to owners and customers [~~of real property~~] at the time of [~~they contract for the~~] sale, purchase, rental, insuring [~~or rent,~~] or financing of real property, a copy of the pamphlet "What Kentucky's Fair Housing Law Means". [~~Your Rights and Responsibilities Under Kentucky's Civil Rights Act" incorporated by reference. The pamphlet may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Equal Employment Opportunity Notice (February, 1993)";

(b) "Public Accommodations Welcome Notice (February, 1993)";

(c) "Equal Housing Opportunity Notice (February, **1993** [~~1992~~])";

(d) Pamphlet: "What Kentucky's Fair Housing Law Means (February, 1993)".

(2) This material may be inspected, copied or obtained:

(a) At the Office of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 292-5566;

3. (502) **595-4084** [~~595-4024, Extension 251~~] (TDD), for the hearing impaired;

4. Kentucky Relay Service (800) 648-6056 (TTY/TDD).

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: January 25, 1993
FILED WITH LRC: February 12, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(As Amended)

104 KAR 1:020. Administrative proceeding [~~under the Kentucky Civil Rights Act~~].

RELATES TO: KRS [~~Chapter~~] 344.010 to 344.500, 344.600 to 344.680, 344.990

STATUTORY AUTHORITY: KRS [~~13A.100,~~] 344.190, 446.030

NECESSITY AND FUNCTION: This administrative regulation informs the public of the procedures followed by the Kentucky Commission on Human Rights in processing and conciliating complaints of unlawful discrimination under KRS 344.010 to 344.500, 344.600 to 344.680 and 344.990.

[~~Section 1. Definitions. (1) "Act" means the Kentucky Civil Rights Act, KRS Chapter 344.~~

~~(2) "Investigator" means a member of the commission staff designated by the executive director to investigate the allegations of the complaint and make a determination of whether there is probable cause, or a commissioner appointed by the chairman.~~]

Section 1. [~~2.~~] Complaint. (1) Filing.

(a) Assistance in [~~drafting and~~] filing complaints shall be available to complainants at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.[~~, at any other commission office, and from any commission staff member.~~]

(b) Complainants may provide information to be contained in a complaint by telephone to the Kentucky Commission on Human Rights [~~at (502) 595-4024 or (800) 292-5566 (voice) or (502) 595-4024, ext. 251 (TDD)~~].

(c) The Kentucky Commission on Human Rights may reduce information received by telephone to writing on the prescribed complaint form and may send it to the complainant to be signed unless the information fails to establish a violation of KRS 344.010 to 344.500, 344.600 to 344.680, and 344.990.

(d) [~~(b)~~] Upon the receipt of a communication from the Federal Equal Employment Opportunity Commission (EEOC) or the United States Department of Housing and Urban Development (HUD) that [~~transmitting~~] a complaint [~~which~~] has been submitted [~~to that agency~~], the executive director[~~, acting in the name of the commission,~~] may issue a complaint in writing and attach any [~~thereto the~~] materials transmitted from the federal government[~~, if any~~].

(2) Complaint form. The complaint:

(a) Shall be in writing. [~~and~~]

(b) The commission shall provide a complainant with a "Complaint Form". [~~(February, 1992), hereby incorporated by reference to aid the complainant if so desired. This form may be inspected, obtained or copied at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

(c) The complaint shall be signed and affirmed or sworn before a notary public or other person duly authorized by law to administer oaths and take acknowledgments.

(d) Notarial service shall be furnished without charge by the commission.

(3) Computation of time.

(a) **If the alleged discriminatory act is part of a continuing discriminatory practice, it shall be deemed to have occurred on a date subsequent to the commencement of the discriminatory practice.** [~~If the alleged discriminatory practice is of a continuing nature, the date of the occurrence of the [said] practice shall be deemed to be any date subsequent to the commencement of the practice.~~]

(b) The date of the occurrence shall include [~~up to and including~~] the date on which the:

1. Practice shall have ceased; or

2. [~~the date on which the~~] Complaint shall have been filed, if the unlawful practice continues.

(c) In computing the time for timely filing of a complaint, the following shall apply:

1. The day of the occurrence of the alleged discriminatory practice shall not be included;

2. The last day of the occurrence of the alleged discriminatory practice shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the computation period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(4) Place of filing. A complaint shall be filed with the commission at its office in Louisville.

(5) Manner of [~~in~~] filing.

(a) The complaint may be filed by personal delivery or mail to the commission's office in Louisville.

(b) A complaint may be delivered to:

1. A commissioner; [~~or~~]

2. A member of the commission's staff; or

3. [~~to~~] Any other commission office. It shall be the responsibility of the person or office with whom a complaint is filed to timely file the complaint [~~for filing~~] at the commission's Louisville office.

(6) Amendment of complaint.

(a) The commission, the presiding hearing commissioner, or the complainant shall have the power reasonably and fairly to amend a complaint.

(b) Amendments may include amendments to:

1. Cure technical defects or omissions;

2. Amplify the allegations in the complaint; or

3. The joinder of additional or substitute respondents.

(c) The presiding hearing commissioner shall determine which amendments not specified in this subsection are reasonable or fair amendments.

(d) Prior to the issuance of a notice of hearing:

1. A complainant may have the complaint amended; or

2. With the consent of the complainant, the complaint may be amended by the commission.

(e) After the issuance of a notice of hearing, a complaint may be amended if the presiding hearing officer approves.

(f)1. If a complaint is amended, the respondent may request that the hearing be postponed.

2. A hearing shall not be postponed for more than ten (10) days after the original hearing date.

[~~(a) The power to amend a complaint may be exercised prior to the issuance of a notice of hearing by the commission staff with the consent of the complainant and after the issuance of a notice of hearing by the presiding hearing commissioner with the consent of the complainant.~~

~~(b) The complainant's power to amend the complaint may be exercised prior to the issuance of a notice of hearing as a matter of right, and after notice of hearing at the discretion of the presiding hearing commissioner.~~

~~(c) If a complaint is amended, postponement of the hearing date may be granted to the respondent upon a request to the commission. In no event shall the hearing date be more than ten (10) days later than the original hearing date.~~]

(7) Withdrawal of complaint. A complainant may withdraw the complaint, or any part of the complaint, without prejudice if the complainant:

(a) Files a written request stating the reasons for withdrawal; and

(b) Written consent is obtained from the:

1. Executive director, if the request is made before the issuance of a notice of hearing; or

2. Chairperson of the commission or presiding officer, if the request is made after the issuance of a notice of hearing. [~~Upon the written request of the complainant, stating the reasons for a request, a complaint or any part thereof, may be withdrawn:~~

~~(a) If the request for withdrawal is made before the case has been noted for hearing, the written consent of the executive director shall be obtained.~~

~~(b) If the request for withdrawal is made after the case has been noted for hearing, the written consent of the chairman shall be obtained.~~

~~(c) In either case of withdrawal, withdrawal shall be without prejudice to the rights of the complainant.~~]

Section 2. [~~3.~~] Notice of Hearing. (1) The executive director shall schedule a hearing and report [~~same~~] to the chairperson [~~chairman who shall thereupon appoint a presiding hearing commissioner and may appoint one (1) or more additional hearing commissioners~~].

(2) Notice of hearing. If a party is represented by an attorney, a copy of the notice of hearing, [~~and~~] complaint, any other documents, and any other amendments to documents [~~as the same may have been amended~~], shall be furnished to the [~~said~~] attorney.

(3) Place of hearing.

(a) A [~~The place of any~~] hearing shall be held at an [~~any~~] office of the commission or any other place [~~as may be~~] designated by the commission. A complainant or respondent may request that the location of a hearing be changed. [~~The commission shall give consideration to a request for a change of hearing location made by the complainant or the respondent.~~]

Section 3. [~~4.~~] Answer to Complaint. (1) Filing of answer.

(a) The respondent [~~shall~~] or the respondent's attorney of record shall answer the complaint or amended complaint.

(b) The answer shall be:

1. In writing;

2. [~~and~~] Signed by the respondent or respondent's attorney of record; and

3. Filed with two (2) copies at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.

(2) Content.

(a) The answer shall state in short and plain language [~~terms~~] the defenses to each claim asserted.

(b) The answer also [~~and~~] shall admit or deny the allegations in the complaint.

(c) A defense of lack of jurisdiction shall be specifically stated in the answer. The defense shall include [~~, together with~~] a brief statement of facts upon which the respondent relies for this defense.

(d) If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, the answer shall so state.

(e) The answer shall contain the mailing address of:

1. The respondent; and

2. If applicable, respondent's attorney of record.

(3) Manner of filing. The answer shall [~~may~~] be filed by:

1. Registered or certified mail addressed to the office of the commission in Louisville; or

2. [~~by~~] Delivery to the [~~said~~] office[s].

(4) Failure to deny or admit. Failure to state in respondent's answer that respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation shall be deemed an admission of the allegation. [~~Failure to deny or admit an allegation in the complaint, unless the respondent shall state in the answer an absence of knowledge or information sufficient to form a belief, shall be deemed an admission of allegation.~~]

(5) Defense and new matter. Any allegation of new matter contained in the answer shall be deemed denied without the necessity of a reply.

(6) Extension of time for filing. Upon application, the chairperson

[~~chairman~~] or the presiding hearing commissioner may for good cause shown extend the time within which an [~~the~~] answer may be filed.

(7) Amendments of answer. An original amended answer with two (2) copies [~~of the amended answer~~] shall be filed with the commission as provided in subsection (3) of this section.

Section 4. [~~5.~~] Hearing Procedures. (1) Appearances.

(a) If possible, [~~Whenever practicable~~] the complainant or the party on whose behalf the complaint was filed, attorney shall appear at the hearing to testify [~~, with or without counsel, the submit testimony~~].

(b) The complainant, the Attorney General, and other permitted persons or [~~in the discretion of~~] the presiding hearing commissioner[~~, any person~~] may intervene, examine and cross-examine witnesses, and present evidence.

(2) Who shall conduct.

(a) Hearings shall be conducted before one (1) or more [~~hearing~~] commissioners [~~to be~~] appointed by the chairperson [~~chairman~~].

(b) If [~~In the event~~] more than one (1) hearing commissioner is appointed, the chairperson [~~chairman~~] shall designate one (1) of them [~~the hearing commissioners~~] to act as presiding hearing commissioner.

(3) Power and duties of the presiding hearing commissioner. The presiding hearing commissioner shall:

(a) [~~have full authority to~~] Control the procedure of a hearing;

(b) [~~to~~] Admit or exclude testimony or other evidence;

(c) [~~and to~~] Rule upon [~~all~~] motions and objections;

(d) [~~. The presiding hearing commissioner shall~~] Make full inquiry into [~~all~~] the facts in issue;

(e) [~~and shall~~] Obtain a full and complete record of [~~all~~] facts necessary for a fair determination of the issues.

(4) Procedure.

(a) Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. [~~However,~~] Irrelevant, immaterial, or unduly repetitious evidence shall be excluded [~~and the rules of privilege shall be given effect~~].

(b) Two (2) or more proceedings [~~under the act~~] may be joined by the commission.

(5) Stipulations. The parties may file a stipulation as to any relevant matter [~~the facts, in which event the same shall be numbered and used at the hearing~~]. A stipulation shall not preclude the offering of additional evidence by any party.

(6) Continuation and adjournments.

(a) A hearing commissioner may:

1. Continue a hearing from day to day;

2. Adjourn a hearing to a later date or to a different place.

(b) A hearing commissioner may continue or adjourn a hearing by:

1. Announcement at the hearing; or

2. Other notice to all parties. [~~The hearing commissioners may continue a hearing from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing, or by appropriate notice to all parties.~~]

(7) Motions and objections. A motion or objection [~~Motions~~] made during a hearing, [~~and objections with respect to the conduct of a hearing,~~] including objections to the introduction of evidence, shall be:

(a) Made [~~stated~~] in writing or orally; and

(b) [~~shall be~~] Included in the record of a hearing [~~the hearings~~].

(8) Oral arguments and briefs. The presiding hearing commissioner shall permit the parties, their attorneys, or the members of the commission's staff presenting the case in support of the complaint, to present oral argument [~~argue orally before the hearing commissioners~~] and to file briefs. [~~Oral arguments shall not be included in the record unless the presiding hearing commissioner shall so direct.~~]

(9) Improper conduct. The presiding hearing commissioner may exclude from the hearing room or from further participation in the proceeding a [~~any~~] person who engages in improper conduct before the hearing commissioners.

(10) Waiver of hearing. If a hearing has not been held, or if findings of fact or conclusions of law have not been made, an order may be entered if:

(a) The respondent has consented in writing; and

(b) Written notice has been given to all parties. [~~With the consent in writing of the respondent and notice to all parties, an order may be entered without holding any hearing or the making of any findings of fact or conclusion of law.~~

~~(11) Public hearings. All commission hearing shall be open to the public unless the chairman or the presiding hearing commissioner directs a closed hearing.~~]

(11) [~~(12)~~] Written transcript of the record. The written transcript of the record of a [~~upon the~~] hearing [~~before the hearing commissioners~~] shall consist of:

(a) The notice of the hearing;

(b) The sworn complaint and amended complaint if applicable; [~~as the same may have been amended,~~]

(c) The answer and amended answer if applicable; [~~, as the same may have been amended,~~]

(d) The transcript of the testimony taken at the hearing;

(e) [~~the~~] Exhibits and depositions offered in evidence;

(f) Written applications;

(g) Briefs;

(h) Orders;

(i) Motions;

(j) Oral arguments; [~~if directed by the hearing examiner,~~]

(k) Stipulations;

(l) The findings of fact;

(m) Conclusions of law; and

(n) The final order of the commission.

Section 5. Issuance of Subpoena. (1) If [~~6. Discovery. Subpoenas. Where~~] a subpoena or subpoena duces tecum is [~~applied for and~~] issued at the request [~~instance~~] of a [~~any~~] party to a hearing or other proceeding, the cost of service, witness and mileage fees[~~, if any,~~] shall be borne by the party who [~~at whose instance it has been~~] requested the subpoena.

(b) If [~~and issued. Where~~] a subpoena or subpoena duces tecum is issued by order [~~at the instance~~] of a [~~any~~] commissioner or the executive director, the cost of service, witness, and mileage fees[~~, if any,~~] shall be borne by the commission.

Section 6. Disclosure of Conciliation Discussions and Agreements. (1) Each party's written consent shall be obtained prior to the release of information relating to conciliation discussions.

(2) The commission may make public a conciliation agreement or any part thereof.

Section 7. Filing of Orders. An order [~~All orders~~] issued by the commission after a hearing shall be filed in the commission's office in Louisville.

Section 8. Certification. The chairperson [~~chairman~~] or the executive director shall [~~is authorized and empowered to~~] certify [~~all~~] documents or records which are a part of the files and records of the commission.

[~~Section 9. Construction of Administrative Regulations and Pleadings. (1) Administrative regulations shall be liberally construed to effectuate the purposes and provisions of KRS 334.010 to 344.450 and 344.990 and the policies of the Kentucky Commission on Human Rights.~~

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

either parties.]

[Section 9. [10.] Creation of Administrative Regulations [Rules]. (1) An administrative regulation [Rules of practice and procedure] may be promulgated [adopted,] amended, or repealed [rescinded] by the commission at a regular or special meeting.

(2) Notice of the proposed promulgation [adoption], amendment, or repeal of an administrative regulation [recision] shall be given in writing to all members of the commission at least ten (10) days before the meeting.

(3) [; except that] Ten (10) days notice shall not be required if [when] two thirds (2/3) of the members [membership] of the commission [shall] approve in writing the promulgation [any adoption], amendment, or repeal of an administrative regulation.] [recision. Provided further, all amendments and the process for amending commission administrative regulations shall comply with KRS Chapter 13A.]

Section 9. [10.] [11.] General Investigations. The commission may conduct general investigations into the problems of discrimination and may study and report upon the problems of the effect of discrimination on any field of human relationships.

Section 10. [11.] Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Complaint Form (February, 1993)"; and

(b) "Instructions for Completing the Complaint Form (February, 1993)".

(2) This material may be inspected, copied or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 295-5566;

3. (502) 595-4084 [4024, extension 251], (TDD), for the hearing impaired;

4. Kentucky Relay Service, (800) 648-6056 (TTY/TDD).

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: January 25, 1993
FILED WITH LRC: February 12, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(As Amended)

104 KAR 1:030. Recordkeeping and Reporting by employers, labor organizations and employment agencies. [Employer records and reports.]

RELATES TO: KRS [Chapter] 344.040, 344.060, 344.500
STATUTORY AUTHORITY: KRS [13A.100,] 344.250
NECESSITY AND FUNCTION: This administrative regulation establishes [sets forth] the procedures to be utilized by employers, labor organizations and employment agencies [established by the Kentucky Commission on Human Rights] with respect to the maintenance and preservation of employment records and employment reports.

Section 1. Definition[s]. (1) "[Personnel] Records relevant to the determination [complaint]" means all:

(a) Personnel or employment records relating to the complainant and [of] other employees holding positions similar to that held or sought by the complainant;

(b) Application forms or test papers completed by the complainant and [results] of other applicants for the same position; and

(c) Personnel or employment records relating to the complainant.

(2) "Final disposition of the complaint" means the expiration of the statutory period within which the complainant may [for an] appeal [of] an administrative [or judicial] order or commence a judicial action.

Section 2. Employer Information Report. (1) Upon receipt of a complaint of employment discrimination, an employer shall provide a current employer information report.

(a) The report shall include a workforce breakdown of the employers' temporary and permanent employees within the Commonwealth of Kentucky.

(b) The report shall contain a breakdown of the employers' workforce by:

1. Race;

2. Age;

3. National origin; or

4. Sex.

(c) An employer may acquire the information necessary for completion either by:

1. Visual surveys; or

2. By the maintenance of postemployment records.

(d) Postemployment records which identify employees by race, color, religion, disability, age, national origin or sex shall be kept separately from personnel records available to those responsible for personnel decisions.

(2) [(1)] An employer may substitute a comparable federal government employer information [employee workforce breakdown] report.

(3) [(2)] If the comparable government employer information report does not provide a current workforce breakdown descriptive of employees [the employer's] actual job categories, the employer shall update or modify the information contained in the report.

Section 3. Preservation [Retention] of Records Made or Kept. (1)**(a) A personnel or employment record, made or kept by an employer, shall be preserved by the employer for a period of one (1) year from the date of the:**

1. Making of the record; or

2. Personnel action involved, whichever occurs later.

(b) These records shall include:

1. Requests for reasonable accommodation;

2. Application forms; and

3. Other records related to:

a. Hiring;

b. Promotion;

c. Demotion;

d. Transfer;

e. Lay-off;

f. Termination; and

g. Terms of compensation. [A [Any] personnel or employment record made or kept by an employer shall be preserved by the employer, for example, requests for reasonable accommodation, application forms, and other records having to do with hiring, promotion, demotion, transfer, lay off, termination, and terms of compensation for a period of one (1) year [six (6) months] from the date of the making of the record or the personnel action involved, whichever occurs later.]

(2) Upon receipt of [The personnel records of a terminated employee shall be kept for a period of six (6) months from the date of termination.

(3) If] a complaint of discrimination [has been filed], the respondent employer shall preserve all employee personnel records relevant to the determination [complainant] until final disposition of the complaint.

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: January 25, 1993

FILED WITH LRC: February 12, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(As Amended)

104 KAR 1:040. Guidelines for advertising employment or licensing opportunities [~~advertisement~~].

RELATES TO: KRS [~~Chapter~~] 344.040, 344.050, 344.060, 344.070, **29 USC 623f, 42 USC 2000e-2(3)**

STATUTORY AUTHORITY: KRS 344.190, 344.080, 29 CFR 1604.5

NECESSITY AND FUNCTION: This administrative regulation establishes the procedures to be used by an employer, licensing agency, labor organization or employment agency in advertising for jobs or licensing opportunities. [~~is designed to eliminate job advertisements which discriminate against persons covered under KRS 344.010 to 344.450 and 344.990.~~]

Section 1. Definition. Bona fide occupational qualification is defined in 42 USC 2000e-2(e) and 29 USC 623(f).

Section **2.** [~~1.~~] Help Wanted Notices or Advertisements. (1) An advertisement or notice shall utilize a neutral job qualification, title, term, phrase or description unless a person's [~~if the job is not a job for which~~] sex, religion, **between** [~~age~~] forty (40) **and** [~~to~~] seventy (70), or national origin is deemed by the commission to be [~~not~~] a bona fide occupational qualification.

(2) Employers shall, if possible, utilize gender neutral position titles and job descriptions selected from the commission's listing of "Gender Neutral Employee Advertisement" or "Gender Neutral Employment Terminology." [~~(a) "Listing of Terms Considered Discriminatory With Regard to Employment Advertising" (February, 1992) is incorporated by reference.~~

~~(b) This document may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. through 4:30 p.m.~~]

Section **3.** [~~2.~~] Bona-fide Occupational Qualification. (1) An employer, labor organization, licensing agency, or employment agency shall have the burden of establishing with the commission that either sex, religion, **between forty (40)** [~~age forty one (41)~~] [~~forty (40)~~] **and seventy (70)** [~~to sixty nine (69)~~] [~~seventy (70)~~], or national origin is a bona fide occupational qualification.

(2) A sex or gender-based bona fide occupational qualification shall:

(a) Be necessary for reasons of personal modesty or privacy; and

(b) Comply with EEOC "Guidelines on Job Opportunity Advertising on the Basis of Sex".

[~~(c) This document may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, The Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky 40202, Monday through Friday, 8 a.m. to 4:30 p.m. It may also be obtained from EEOC, 600 Dr. Martin Luther Jr. Place, Suite 260, Louisville, Kentucky 40202.~~]

Section **4.** [~~3.~~] (1) A person who intends to publish, print, circulate, or display a job advertisement may request the commission to determine whether sex, religion, **between forty (40) and seventy (70)** [~~age forty one (41)~~] [~~forty (40)~~] [~~to sixty nine (69)~~] [~~seventy (70)~~], or national origin is a bona fide occupational qualification for the job to be advertised.

(2)(a) Within three (3) workdays of receipt of the request, the commission shall:

1. Make a determination in writing; and
2. Forward its written determination.

(b) The determination of the commission shall be based on:

1. The specific job;
2. Whether the qualification is reasonably necessary to the normal operation of the business; and
3. Any [~~All~~] other pertinent factors.

Section **5.** [**4**]. Newspapers and other publications which print employment advertisements shall be [~~are~~] encouraged by the commission to:

(a) Maintain lists of gender-neutral [~~nondiscriminatory~~] terms; and [~~to~~]

(b) Instruct their employees to advise advertisers of gender neutral job qualifications, titles and descriptions. [~~nondiscriminatory terms.~~]

Section **6.** [**5**]. (1) In a conciliation agreement or order, the commission may include a provision requiring the respondent to use the term "equal opportunity employer [~~employment opportunity~~]", or a substantially similar term, in a notice or advertisement of employment or licensing opportunity.

(2) Persons advertising for employment opportunities shall be encouraged by the commission to use [~~A person may use~~] the terms specified in subsection (1) of this section in a notice or advertisement [~~on his own authority~~].

Section **7.** [~~6.~~] Materials Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Gender Neutral Employee Advertisement (February, 1993)";

(b) "Gender Neutral Employment Terminology (February, 1993)";

(c) "EEOC Guidelines on Job Opportunity Advertising on the Basis of Sex: 29 CFR 1604.5 - Job Opportunities Advertising".

(2) This material may be inspected, copied or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;
2. (800) 295-5566;
3. (502) 595-**4084** [~~4024, extension 251~~], (TDD), for the hearing impaired;
4. **Kentucky Relay Service, (800) 648-6056 (TTY/TDD).**

EDGAR S. GOINS, Chairperson
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GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
(As Amended)

104 KAR 1:050. Standards and procedures for providing equal employment opportunities [~~Guidelines on discrimination because of sex, religion, employment selection, and national origin~~].

RELATES TO: KRS 344.010 to 344.500 [~~344.450~~], 344.990, 29 CFR 1604.1 to 1604.4, 1604.6 to 1604.11, 1605.1 to 1605.3, 1606.1 to 1606.8, 1607.1 to 1607.16, 1630

STATUTORY AUTHORITY: KRS [~~13A.100,~~] 344.190, 29 CFR 1604.1-1604.11, 1605, 1607, 1630, **29 CFR 1606**

NECESSITY AND FUNCTION: This administrative regulation establishes employment standards and procedures promulgated by the EEOC and enforced by the Kentucky Commission on Human Rights. [~~is designed to give Kentucky employers and employees the~~

~~benefit of consistent interpretations of law by the Kentucky Commission on Human Rights, the Equal Employment Opportunity Commission, and the federal courts.~~]

Section 1. Employment Discrimination Guidelines. In the determination of issues prohibiting **employment** discrimination [~~by KRS 344.010 to 344.500 and 344.990,~~] the commission shall follow and enforce guidelines promulgated by the Equal Employment Opportunity Commission. [~~Religious Discrimination. EEOC "Guidelines on Discrimination because of Religion" is incorporated by reference and may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

Section 2. **Federal Regulations Adopted Without Change** [~~Material Incorporated by Reference.~~] (1) The following **federal regulations are adopted without change:** [~~material is incorporated by reference:~~]

(a) "EEOC Guidelines on Discrimination Because of Religion (with Appendix A - Background Information): 29 CFR 1605.1 to 1605.3", **45 Federal Register 72612, October 31, 1980**.

(b) "EEOC Guidelines on Sex Discrimination (with Appendix to Part 1604 - Questions and Answers on the Pregnancy Discrimination Act): 29 CFR 1604.1 to 1604.4 and 1604.6 to 1604.11", **37 Federal Register 6836, April 5, 1972 and 44 Federal Register 23805, April 20, 1979**.

(c) "EEOC Uniform Guidelines on Employee Selection Procedure, 29 CFR 1607.1 to 1607.16", **43 Federal Register 38295, August 25, 1978**.

(d) "EEOC Guidelines on Discrimination Because of National Origin, 29 CFR 1606.1 to 1606.8", **45 Federal Register 85635, December 29, 1980**.

(e) "Equal Employment Opportunity for Individuals with Disabilities" with Interpretive Guidance on Title I of the Americans with Disabilities Act and the Final Rule and Regulations, 29 CFR 1630", **56 Federal Register 35725, July 26, 1992**.

(2) **The federal regulations** [~~This material~~] may be inspected, copied or obtained:

(a) At the Office of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;
2. (800) 292-5566;
3. (502) 595-**4084** [~~4024, Extension 251~~] (TDD), for the hearing impaired;
4. **Kentucky Relay Service, (800) 648-6056 (TTY/TDD).**

(c) The material referred to in subsection (1)(e) of this section is also available in the following alternative formats directly from the office of the Americans with Disabilities Act at (202) 514-0301 (voice), (202) 514-0318 (TDD) or (202) 514-6193 (electronic bulletin board):

1. Large print;
2. Braille;
3. Electronic file on computer disk;
4. Audio-tape. [~~Sex Discrimination. EEOC "Guidelines on Sex Discrimination Because of Sex" is incorporated by reference. A copy may be inspected, copied, or obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

~~Section 3. Employment Selection Procedure. EEOC "Uniform Guidelines on Employee Selection Procedure" is incorporated by reference and may be obtained or copied at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~

~~Section 4. National Origin Discrimination. EEOC "Guidelines on National Origin Discrimination" is incorporated by reference and may be inspected, copied, or obtained at the Kentucky Commission on Human Rights, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m.~~]

EDGAR S. GOINS, Chairperson
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GENERAL GOVERNMENT CABINET
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104 KAR 1:060. [~~Records and reports for~~] Multiple dwelling developments [~~and~~] reporting and recordkeeping requirements [~~form~~].

RELATES TO: KRS [~~Chapter~~] 344.360
STATUTORY AUTHORITY: KRS 13A.100, 13A.120, 344.190(10), (11), **(14),** 344.250(2), (7)
NECESSITY AND FUNCTION: This administrative regulation establishes [~~the~~] requirements for the retention, content [~~governing records~~] and submission of annual reports by owners of multiple dwelling developments covered by KRS 344.360.

Section 1. Definitions. (1) "Multiple dwelling development" means one (1) or more housing accommodations:

(a) [~~buildings Situated:~~

~~(a) At the same general location and either operated under one (1) management or with ownership in common; or~~

~~(b) Two (2) or more buildings~~] Located within the Commonwealth of Kentucky;

(b) Operated [~~if they are~~] under the same management or [~~are~~] owned by the same person or persons; and [~~.~~]

(c) Containing [~~The building(s) shall contain~~] in the aggregate at least twenty-five (25) units[~~;~~

~~(d) It shall include, but not be limited to, an apartment building, garden apartment, townhouse, or condominium~~].

(2) "Racial or national origin designation" means white, black, hispanic, American Indian or Alaskan native, biracial or multiracial, Asian or Pacific Islander [~~or other~~].

(3) "Leaseholder" means the party with whom the landlord has entered into an agreement for [~~the apartment~~] rental. [~~The agreement may be either oral or written. It shall include the name of the sublettee or assignee of the agreement if notice or approval of subletting or assignment is a condition of the agreement.~~

~~(4) "Apartment turnover" means a change of leaseholder or purchaser.~~]

(4) [~~(5)~~] "Applicant" means a [~~any~~] person who, for the purpose of either renting or purchasing a unit of [~~within~~] a multiple dwellings development, appears before either the owner, **lessor** [~~leaser~~], agent or other principal or operator.

Section 2. Reports Relevant to the Determination of Unlawful Practices. (1) An owner of a multiple dwelling development shall file one (1) copy of the "Multiple Dwelling Report" annually with the Kentucky Commission on Human Rights by August 15.

(2) The annual "Multiple Dwelling Report" shall include cumulative information for a period from July 1 to June 30.

(3) For each applicant and occupant of the multiple dwelling development, the report shall contain the:

(a) Racial or national origin designation; and

(b) Familial status.

(4) A consolidated report may be filed if:
(a) There are multiple owners of a development; and
(b) The development is operated as one (1) unit.
(5) The manager, agent, or other persons responsible for management may file for the owner.

[~~Section 2. Persons Required to Report. (1) An~~ [The] ~~owner of a~~ [any] ~~multiple dwelling development [which has twenty five (25) or more units] shall file an annual report with the Kentucky Commission on Human Rights.~~

~~(2) The report shall contain [both] the racial, or national origin designation and familial status~~ [composition] ~~of each occupant of the multiple dwelling development.~~

~~(3) The report shall also include~~ [including] ~~factors affecting the multiple dwelling development's population of racial or national origin groups and persons in the category of familial status.~~ [composition. ~~Where there are multiple owners of a development and the development is operated as one (1) unit, a consolidated report may be filed.~~]

~~(4) A consolidated report may be filed if:~~
~~(a) There are multiple owners of a development; and~~
~~(b) The development is operated as one (1) unit.~~
~~(5) The manager, agent, or any other person responsible for management may file for the owner.~~] [~~Reports for condominiums shall be filed by the development manager.~~]

[~~Section 3. Multiple Dwelling Report. The report shall be submitted on the "Multiple Dwelling Report" (February, 1992 edition) form incorporated by reference. This form may be obtained or copied at the Kentucky Commission on Human Rights, the Heyburn Building, 332 West Broadway, Suite 700, Louisville, Kentucky, 40202, Monday through Friday, between the hours of 8 a.m. and 4:30 p.m. A "Suggested Form for Recording Applicant Information" is also incorporated by reference.~~]

[~~Section 3.~~ [4.] ~~Filing of Reports. (1) One (1) copy of the "Multiple Dwelling Report" shall be filed~~ annually ~~with the Kentucky Commission on Human Rights by August 15~~ [July 1, of each year].

~~(2) The~~ annual ~~"Multiple Dwelling Report" shall include cumulative information for a period from July 1 to June 30~~ [of one (1) year prior ~~to the month of filing. The commission may postpone or waive the filing of any required report].~~]

Section **3.** [~~4.~~] Instructions for Data Collecting on Race or National Origin. (1) The owner of a **housing accommodation not exempted by KRS 344.362 or 344. 365 shall** [~~multiple dwelling development may~~] list questions regarding the race or national origin of the applicant **or lessor** [~~on the lease or application form, or~~] on a separate form [~~that refers to the application~~].

(2) The owner may ask for the information, but shall not require the applicant to provide it.

(3) If an applicant refuses to provide the information when the applicant applies in person, the applicant's refusal shall be noted on the form. The owner may supply the information based on visual observation or surname.

(4)(a) An applicant or tenant shall be informed, **by the owner,** that the Kentucky Commission on Human Rights is requesting information in order to monitor compliance with state statutes that prohibit persons from discriminating against tenants and applicants on the basis of race or national origin.

(b) An applicant or tenant shall be advised, **by the owner,** that if the information is not provided when the application is taken in person, the data will be collected on the basis of visual observation or surname.

(5) Questions shall not be asked of a telephone applicant.

[~~(6) An effort to collect the data shall not be made upon receipt of an incomplete application by mail.~~

~~(7) The term "other" shall not be used if an opportunity is presented for visual observation.~~]

Section **4.** [~~5.~~] Maintenance and Retention of Records. The owner of **a housing accommodation covered by KRS 344.360 and not exempted by KRS 344.362 or 344.365** [~~the multiple dwelling development~~] shall maintain the following records:

(1) Racial or national origin and familial status designation of each applicant for an apartment:

(2) [~~Racial designation of each new apartment leaseholder or purchaser.~~

~~(3)~~] Racial or national origin and familial status designation of each [~~new~~] leaseholder or purchaser;

(3) [~~(4)~~] Apartment rental or sales recruiting techniques ; and

(4) [~~(5)~~] All records shall be retained [~~kept on file~~] for a period of two (2) years and shall be available for inspection and review upon request by an employee of the Kentucky Commission on Human Rights, Monday through Friday between the hours of 8 a.m. and 4:30 p.m.

Section **5.** [~~6.~~] Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Multiple Dwelling Reporting Form (February, 1993)";

(b) "Suggested Form for Recording Applicant Information (February, 1993)".

(2) This material may be inspected, copied or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;

2. (800) 295-5566;

3. (502) 595-**4084** [~~4024, extension 251~~], (TDD), for the hearing impaired;

4. Kentucky Relay Service, (800) 648-6056 (TTY/TDD).

EDGAR S. GOINS, Chairperson
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GENERAL GOVERNMENT CABINET
Department for Commission on Human Rights
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104 KAR 1:070. Records and reports for apprenticeships and training programs.

RELATES TO: KRS 344.070
STATUTORY AUTHORITY: KRS [~~13A.100,~~] 344.250(3)
NECESSITY AND FUNCTION: This administrative regulation establishes the requirement governing the submission, retention, content, and substitution of records and reports by persons covered by KRS 344.250(3).

Section 1. Retention of Records. (1) An apprenticeship or training program shall keep [~~in chronological order for a period of two (2) years~~] a list of applicants according to race, national origin, [~~color,~~] sex and age.

(2) The list shall be maintained:

(a) In chronological order;

(b) For a period of two (2) years.

(3) **A list of** requests for reasonable accommodations by persons with disabilities shall also be maintained for two (2) years.

Section 2. Enrollment Records. (1) An apprenticeship or training program shall furnish to the commission, upon request a breakdown of current enrollment by race, national origin [~~color~~], sex and age.

(2) A list of requests for reasonable accommodations from persons with disabilities shall also be furnished upon request.

Section 3. Substitution of Records. [~~So as to avoid undue burdens on persons subject to this administrative regulation, an apprenticeship or training program may provide to the commission records and reports submitted in the regular course of business to other governmental agencies. However,~~] The commission may [~~reserves the right~~] when necessary for a complete investigation disallow substitution of [~~to require records in addition to~~] reports previously submitted to other governmental agencies.

EDGAR S. GOINS, Chairperson
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104 KAR 1:080. Guidelines on fair housing.

RELATES TO: KRS 344.010, 344.360 to 344.385, 344.600 to 344.680
STATUTORY AUTHORITY: KRS [~~13A.100,~~] 344.190(14), 24 CFR 101.20, 101.25 [~~, 29 CFR 101.20 to 101.25~~]
NECESSITY AND FUNCTION: This administrative regulation establishes standards and procedures for determining permissible conduct by persons engaged in real estate or real estate-related transactions.

Section 1. Definitions. (1) "Real estate operator" is defined in KRS 344010(8), and includes, subject to KRS 344.362 and 344.365, [~~means in addition to the definition in KRS 344.010(8)~~] any person engaging in housing practices or any real estate or real estate-related transaction and is not limited to those persons regularly engaging in real estate as a business.

(2) "Conduct" means in addition to practices prohibited by KRS 344.360 any action including statements, words, and utterances.

Section 2. Discriminatory conduct notice, statements and advertisements shall include:

(1) A written or oral notice[~~s~~] or statement[~~s~~] by a real estate operator; and

(2) Written notice or statement including an application, flyer, brochure, deed, sign, banner, poster, billboard, or a document used with respect to the sale or rental of housing accommodations; and

(3) Notices, statements and advertisements include the following: [~~but are not limited to:~~]

(a) The use of words, phrases, photographs, illustrations, symbols or forms which convey that housing accommodations are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, or national origin;

(b) Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, or national origin of such persons;

(c) Selecting media or locations for advertising the sale or rental of housing accommodations which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, or national origin; and

(d) Refusing to publish advertising for the sale or rental of housing accommodations or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, or national origin; and

(4) "Prohibited words, phrases, symbols and visual aids" shall include those specified in 24 [~~29~~] CFR 109.20(a) to (f).

(5) Use of advertising media shall comply with the provisions of 24 [~~29~~] CFR 109.25(a) to (c).

(6) Occupancy restrictions because of familial status.

(a) Real estate operators may enforce nondiscriminatory policies or standards involving reasonable occupancy restrictions on the basis of familial status.

(b) In reviewing occupancy restrictions, the Kentucky Commission on Human Rights shall consider the:

1. Size of bedrooms and unit;
2. Age of children;
3. Configuration of unit; and
4. Other special circumstances which may warrant occupancy restrictions.

[~~(b) In reviewing occupancy restrictions, the Kentucky Commission on Human Rights shall consider the size of bedrooms and unit, the age of children, the configuration of unit and other special circumstances.~~]

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Use of words, phrases, symbols, and visual aids, 24 [~~29~~] CFR 109.20(a) to (f)", **(54 Federal Register 3308, January 23, 1989, as amended at 55 FR 53294, December 28, 1990)**.

(b) "Selective Use of Advertising Media or Content, 24 [~~29~~] CFR 109.25(a) to (c)", **(54 Federal Register 3308, January 23, 1989; as amended at 55 FR 53294, December 28, 1990)**.

(2) This material may be inspected, copied, or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, the Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

1. (502) 595-4024;
2. (800) 292-5566;
3. (502) 595-4084 [~~4024, Ext. 251~~] (TDD), for the hearing impaired;

4. Kentucky Relay Service, (800) 648-6056 (TTD/TDD)

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104 KAR 1:090. Categories of protected persons required to fulfill reporting requirements.

RELATES TO: KRS 344.010, 344.050, 344.060, 344.070, 344.180, 344.190, 344.250, 344.360, 344.370 [~~Chapter 344~~]
STATUTORY AUTHORITY: [~~KRS 13A.100, 344.050, 344.060, 344.070, 344.180, 344.190, 344.250,~~] CCH OFCCP Compliance Manual Chapter 2, Section 2-160.4b, Paragraph 2164, 29 CFR 1602.13
NECESSITY AND FUNCTION: This administrative regulation establishes the standards for categorizing protected persons for the purposes of fulfilling reporting requirements. These categories have been utilized by the Equal Employment Opportunity Commission and the U.S. Department of Labor and are used by the Kentucky Commission on Human Rights.

Section 1. Definitions. (1) "American Indian or Alaskan native" means all persons having origin in any of the original persons of North America and who maintain cultural identification through

nation's affiliation or community recognition. [including the natives of Alaska.]

(2) "Asian or Pacific Islander" means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. The Far East and Southeast Asia area includes [including] China, Japan, Samoa and Vietnam, Cambodia, Laos, and Thailand. The Indian Subcontinent includes India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhatan. The Pacific Islands include the Philippine Islands.

(3) "Hispanic" means all persons having origins in [from] Mexico, Puerto Rico, Cuba, and Central or South America. Persons who may have adopted the Spanish culture but are not otherwise of Spanish origin are to be treated according to their racial identity. Persons having their origin in the racial groups of Africa shall be excluded. Persons of Portuguese ancestry shall be classified as white-caucasians.

(4) "White or caucasian" means all persons having origins in any of the original peoples of Europe, North Africa, or the Middle East. It shall not include persons having Spanish origins or cultures.

(5) "Black or African American" means all persons whose origins are the black racial groups of Africa and some people from South America, such as Brazil, Guyana, Surinam, or Trinidad.

(6) "Multiracial or biracial" means any persons whose parents are of different racial or national origins.

Section 2. Submission of Records. Employers, licensing agencies, labor organizations, financial institutions and real estate operators shall in categories established by Section 1 of this administrative regulation provide information upon receipt of a complaint of discrimination or to submit annual reports.

Section 3. A person or entity [covered by KRS 344.010 to 344.500, 344.600 to 344.680 and 344.950 and] required to make reports shall advise the persons whose racial or national origin status is identified that the information shall be treated confidentially and used for reporting purposes only.

EDGAR S. GOINS, Chairperson
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Department for Commission on Human Rights
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104 KAR 1:100. Nondiscrimination on the basis of disability by a place of public accommodation, licensing and trade organizations.

RELATES TO: KRS 344.050, 344.060, 344.120, 344.130, 344.500, 28 CFR 36

STATUTORY AUTHORITY: KRS 12.290, [13A.100,] 344.190(14), 28 CFR 36, 42 USC 12181

NECESSITY AND FUNCTION: KRS 344.190(14) requires the Kentucky Commission on Human Rights to prescribe administrative regulations to effectuate the purposes and provisions of the Kentucky Civil Rights Act. This administrative regulation provides that all places of public accommodation be designed and constructed so as to be readily accessible to and usable by persons with disabilities. In addition, examinations or courses related to licensing or certification for professional and trade purposes shall be accessible to persons with disabilities. [This administrative regulation establishes standards and procedures promulgated by the U.S. Department of Justice for the purpose of implementing Title III of the Americans with Disabilities Act of 1990. Title III prohibits discrimination on the basis of disability by private entities, in places of public accommodation, and requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible to and usable by persons with disabilities. In addition, examinations or courses related to licensing or certification for professional and trade purposes shall be accessible to persons with disabilities. These standards and procedures promulgated by the U.S. Department of Justice are enforced by the Kentucky Commission on Human Rights.]

Section 1. 28 CFR Part 36, 56 FR 355.43, January 26, 1992, is adopted without change and supplements Title III of the Americans with Disabilities Act, which extends the prohibitions against disabilities discrimination to privately operated public accommodations and commercial facilities. It further requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible to the disabled. This administrative regulation was promulgated by the U.S. Department of Justice and is enforced by the Kentucky Commission on Civil Rights. [Definitions. (1) "Place of public accommodation" means:

(a) A restaurant, bar, or other establishment serving food or drink;

(b) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(c) An auditorium, convention center, lecture hall, or other place of public gathering;

(d) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(e) A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office or an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment.

(f) A terminal, depot, or other station used for specified public transportation;

(g) A museum, library, gallery, or other place of public display or collection;

(h) A park, zoo, amusement park, or other place of recreation.

(i) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(j) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(k) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation;

(l) A religious entity, religious organization, or place of worship is not a place of public accommodation.

(2) "Qualified interpreter" means an interpreter who is able to interpret effectively, accurately and impartially, using any necessary specialized vocabulary.

(3) "Service animal" means a guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of a person with a disability, including guiding persons with impaired vision, alerting persons with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

(4) "Specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(5) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Section 2. Readily Achievable Factors. In determining whether removal of barriers under Section 8 of this administrative regulation is readily achievable factors to be considered include:

~~(1) The nature and cost of the action needed;~~

~~(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures or the impact otherwise of the action upon the operation of the site;~~

~~(3) The geographic separateness and the administrative or fiscal relationship of the site or sites in question to a parent corporation or entity;~~

~~(4) If applicable, the overall financial resources of a parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and~~

~~(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.~~

~~Section 3. Undue Burden -- Factor. In determining whether removal of barriers under Section 8 of this administrative regulation would result in an undue burden, factors to be considered include:~~

~~(1) The nature and cost of the action;~~

~~(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources, legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;~~

~~(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;~~

~~(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity, with respect to the number of its employees; the number, type and location of its facilities; and~~

~~(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.~~

~~Section 4. Prohibited Activities -- General. (1) A place of public accommodation shall not:~~

~~(a) Enter into any contractual, licensing, or other arrangement for the purposes of denying a person with a disability any participation in or benefit from the goods, services, facilities, privileges, advantages or accommodations;~~

~~(b) Provide a person with disabilities with services separate or different from other persons unless the action is necessary and is as effective as that provided to other persons without disabilities;~~

~~(c) Provide segregated accommodations and services to a person with a disability:~~

~~1. Instead, services shall be provided in the most integrated setting appropriate to the needs of the person.~~

~~2. A determination of whether a setting is appropriate and what the needs are shall be based on an objective evaluation which takes into account view of both parties.~~

~~(2) A place of public accommodation shall not deny services to any person or organization because of disability of a person with whom the person or organization is known to have a relationship association.~~

~~(3) A place of public accommodation shall not retaliate against a person because of that person's participation in opposing an activity under this regulation.~~

~~(4) A place of public accommodation shall not be required to provide services to a person with disabilities when that person poses a direct threat to the health or safety of others.~~

~~(5) A place of public accommodation shall not refuse to serve an individual with a disability because its insurance company conditions coverage or rates on the absence of individuals with disabilities.~~

~~Section 5. Eligibility Criteria. A place of public accommodation shall not impose surcharges or apply eligibility requirements that screen out or tend to screen out persons with disabilities from fully enjoying goods and services unless necessary for safe operation.~~

~~Section 6. Modification in Policies, Practices or Procedures. (1) A place of public accommodation shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to persons with disabilities unless the place of public accommodations can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.~~

~~(2) A place of public accommodation shall modify policies, practices or procedures to permit the use of a service animal by a person with a disability.~~

~~(3) A store with check out aisles shall ensure that an adequate number of accessible check out aisles are kept open during store hours, or shall otherwise modify its policies and practices in order to ensure that an equivalent level of convenient service is provided to persons with disabilities as is provided to others. If only one (1) out aisle is accessible and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.~~

~~Section 7. Auxiliary Aids and Services. A place of public accommodation shall take those steps that may be necessary to ensure that no person with a disability is excluded, denied services, segregated or otherwise treated differently than other persons because of the absence of auxiliary aids and services unless the place of public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden.~~

~~Section 8. Removal of Barriers. (1) A place of public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature where such removal is readily achievable.~~

~~(2) Where a place of public accommodation can demonstrate that barrier removal is not readily achievable without undue hardship, i.e., much difficulty or expense, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if these methods are readily achievable.~~

~~Section 9. Examinations and Courses. Any organization that offers examinations or courses related to applications, licensing certification or credentialing for secondary or postsecondary education, professional or trade purposes shall offer examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements or administration.~~]

Section **2.** [~~10.~~] Material **Adopted Without Change** [~~Incorporated by Reference~~]. The following material is **adopted without change** [~~incorporated by reference~~]:

(1) "Nondiscriminatory on the Basis of Disability by Public Accommodations and in Commercial Facilities" - 28 CFR 36, **56 Federal Register 35543, January 26, 1992**.

(2) This material may be inspected, copied, or obtained:

(a) At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or

(b) By calling:

1. (502) 595-4024;
2. (800) 292-5566;
3. (502) 595-**4084** [~~4024, extension 251~~], (TDD), for the hearing

impaired;

4. Kentucky Relay Service, (800) 648-6056 (TTY/TDD).

(c) The material may also be obtained directly from the Office of The Americans With Disabilities Act at (202) 514-0301 (voice), (202) 414-0381 (TDD), or (202) 514-6193 (electronic bulletin board) in the following alternative formats:

1. Large print;
2. Braille;
3. Electronic file on computer disk;
4. Audio-tape.

EDGAR S. GOINS, Chairperson
APPROVED BY AGENCY: January 25, 1993
FILED WITH LRC: February 12, 1993 at 11 a.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended)

105 KAR 1:120. Participation of agencies.

RELATES TO: KRS 78.510(3), 78.530, [through] 78.532, 78.535, 78.780
STATUTORY AUTHORITY: KRS 61.645(9)(e), 78.510(3), 78.780
NECESSITY AND FUNCTION: KRS Chapters 61 and 78 [The statutes] provide for participation of local government entities in the County Employees Retirement System (CERS). This administrative regulation sets out the procedures and requirements for participation.

Section 1. Definitions. (1) "Alternate plan" means the plan under which an [the] employer purchases service credit for its employees by paying an [the] actuarial cost of the service in a lump sum or by annual installments.

(2) "Board" is defined by KRS 78.510(2).

(3) "CERS" is defined by KRS 78.510(1).

(4) "Standard plan" means the plan under which the employer does not purchase service credit for its employees.

Section 2. (1) An agency may participate in CERS if the board determines that the agency:

(a) Meets the definition of county in KRS 78.510;

(b) Is qualified to establish and maintain a governmental plan as defined in 26 USC 414(d) and 92 USC 1002(32);

(c) Satisfactorily completes the trial period established by the provisions of this administrative regulation; and

(d) Complies with the provisions of applicable statutes and administrative regulations.

(2) Prior to board approval of an agency that has elected to participate in CERS, the agency shall serve a three (3) month trial period, during which it shall:

(a) Report contributions; and

(b) Comply with the provisions of applicable statutes and administrative regulations governing:

1. Employee participation; and

2. Reporting of contributions.

(3) The board may deny participation if it determines that:

(a) An agency has failed to comply with the provisions of subsection (1) of this section; or

(b) Its participation will have:

1. An adverse impact on the tax qualification of CERS, pursuant to applicable federal law and regulation; or

2. A significant adverse impact on the actuarial soundness of CERS.

(4) If the board denies an agency's request to participate in CERS, it shall refund to the agency and its employees the contributions paid by them to CERS during the agency's trial period. [Before an agency may participate in CERS, the retirement system shall determine that it meets the definition of county in KRS 78.510 and that the agency is qualified to establish and maintain a governmental plan as defined in 26 USC 414(d) and 29 USC 1002(32).]

Section 3. (1) Except as provided in subsection (2) of this section, the effective date of participation shall be the first day of:

(a) The month during which the order required by KRS 78.530(1) is adopted; or

(b) Any month subsequent to the month during which the order required by KRS 78.530(1) was adopted.

(2) If the agency elects the alternate participation plan, the effective date of participation fixed in its order shall not be less than ninety (90) days from the date the agency approved the order. [For participation under the alternate plan, the agency shall request an actuarial study through the retirement system to determine the cost of purchasing past service for all eligible employees at least ninety (90) days prior to the agency's desired participation date. The agency shall provide the information required by the actuary in writing or in the form of compatible magnetic media and shall pay the cost of the study and any revisions to the study to the actuary.]

Section 4. If an agency elects the alternate participation plan, it shall request the Kentucky Retirement Systems to conduct an actuarial study to determine the cost of purchasing past service for eligible employees. [The agency shall adopt an appropriate order that shall establish a participation date and the method of participation. The participation date shall be the first day of any month on or following the date the order is adopted and the method of participation shall be the alternate plan or the standard plan.]

Section 5. An agency shall designate a person to be responsible for compliance with applicable statutes and the reporting requirements established in:

(1) 105 KAR 1:130;
(2) 105 KAR 1:140;
(3) 105 KAR 1:150;
(4) 105 KAR 1:160;
(5) 105 KAR 1:170;
(6) 105 KAR 1:210; and
(7) 105 KAR 1:250. [The agency shall designate an individual to be responsible for reporting wages and employer and employee contributions to the retirement system. The retirement system shall provide forms, instruction and information concerning retirement statutes and regulations to the individual.

Section 6. The board shall review the agency's participation request at the first quarterly board meeting after the agency has reported contributions for a trial period of three (3) or more months. The board may deny participation if the agency fails to comply with retirement statutes governing participation of employees and reporting of contributions during the trial period. The board may deny participation by the agency if fewer than fifty (50) percent of its employees elect to participate in CERS. If the agency is phasing out another retirement plan or if the agency can provide justification for a lower election rate by its employees, the board may allow participation by an agency with fewer than fifty (50) percent of its employees electing to participate in CERS. The board may deny participation if the agency's participation will have an impact on the tax qualification of the system, a significant impact on the actuarial soundness of the system or other adverse impact which the board determines is not in the best interest of the members and beneficiaries of the system. If the board denies the agency's participation request, the contributions paid to the retirement system during the trial period shall be refunded to the employer and its employees.]

Section 6. [7.] The annual installment to amortize the cost of the employees' service under the alternate plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate plan. The payment shall be due each year on the first day of the month in which participation began.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: January 23, 1993
FILED WITH LRC: January 29, 1993 at 3 p.m.

COMPILER'S NOTE: The following regulation, 201 KAR 11:350, was amended by the promulgating agency and the Interim Joint Committee on Business Organizations and Professions, and became effective on April 5, 1993.

KENTUCKY REAL ESTATE COMMISSION
(As Amended)

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

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS 324.360
NECESSITY AND FUNCTION: KRS 324.360 requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a "seller's disclosure of conditions form" and sets forth matters which the form shall contain and allows the inclusion of additional matters. The following form shall be completed and signed as provided in KRS 324.360, by sellers of residential real estate when licensed agents are involved. [If the seller refuses to complete and sign this form, this refusal shall be communicated by the licensed agents in writing to all prospective buyers. The completed and signed form shall be given by the agents to all prospective buyers.]

Section 1. The form shall be as follows:

"SELLER DISCLOSURE OF PROPERTY CONDITION

The information in this form is only for the period the undersigned owned the property beginning (date of purchase) to (date of this form).

This form applies to sales and purchases of residential real estate.

This form is not required for:

1. Residential purchases of new homes if a written warranty is offered;

2. Sales of real estate at auction; or

3. A court supervised foreclosure.

PROPERTY ADDRESS: _____

PURPOSE OF STATEMENT: Completion of this form shall [will] satisfy the requirements of Chapter 324 of the Kentucky Revised Statutes which mandates the seller's disclosure of the condition of and information about the property he [or she] is about to sell. This disclosure is based solely on the seller's observation and knowledge of the property's condition and the improvements thereon. This statement shall not be [is not] a warranty of any kind by the seller or seller's agent and shall not be [is not] intended as a substitute for any inspection or warranty the purchaser may wish to obtain.

INSTRUCTIONS TO THE SELLER: (1) Complete all numbered items. (2) Report all known conditions affecting the property. (3) Attach additional pages with your signature if necessary. (4) Complete this form yourself. (5) If some items do not apply to your property, write "not applicable". (6) If you do not know the answer to a question, write "unknown".

SELLER'S DISCLOSURE: As seller, I/we disclose the following information regarding the property and that this information is true and accurate to the best of my/our knowledge as of the date signed. Seller authorizes the agent to provide a copy of this statement to any person or entity in connection with actual or anticipated sale of the property or as otherwise provided by law. The following are representations made by seller and are not the representations of the agent. The agent has no independent knowledge of the condition of the property except that which is set out on this form.

PROPERTY CONDITIONS, IMPROVEMENTS AND ADDITIONAL INFORMATION:

1. **Does the basement leak?** [Has the basement ever leaked?] ___Yes ___No ___Unknown
   If yes, when? _____ If yes, has the leak been repaired or treated? ___Yes ___No ___Unknown
2. **Does the roof leak?** [Has the roof ever leaked?] ___Yes ___No ___Unknown
   If yes, when? _____ If yes, has the leak been repaired? ___Yes ___No ___Unknown
   What is the condition of the roof? Explain.
   [Approximate age of the roof: _____ Years ___Unknown]
3. What is the source of the water supply? _____
   Has the water been tested? ___Yes ___No ___Unknown
   If yes, will you provide a copy of the test results? ___Yes ___No
4. Have you ever found the water supply to be inadequate? ___Yes ___No If yes, explain:_____
5. What is the source of the property's sewage service? ___Municipal or other sewer system ___Septic tank/septic system ___Other
6. **What is the condition of your sewer? Explain.**
   [Has your sewer service ever been interrupted? ___Yes ___No ___Unknown]
7. Has your sewage system been repaired or treated? ___Yes ___No If yes, approximate date of repair: _____
8. Plumbing system: Are you aware of any leaks in your plumbing system? ___Yes ___No ___Unknown If yes, describe the location and problem: _____
9. Electrical System: Is the electrical system more than twenty years old? ___Yes ___No ___Unknown
10. Have you found it necessary to have any portion of your electrical system repaired by an electrician or other professional? ___Yes ___No ___Unknown
11. Heating System: Type/approximate age_____
12. Cooling System: Type/approximate age_____
13. Have you had your heating or cooling system repaired or had maintenance work performed on your heating or cooling system? ___Yes ___No ___Unknown If yes, the approximate date of the repair or maintenance:

The seller has owned the property since _____ (date) and makes these representations only since that date and only prior to the date this form is completed. If any changes occur in the structure or mechanical or component system of this property from the date of this form to the date of closing, seller will immediately disclose the changed circumstances to the buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or the broker's agent.

Seller _____ Date Seller _____ Date

Buyer _____ Date Buyer _____ Date

THE SELLER REFUSES TO COMPLETE THIS FORM AND ACKNOWLEDGES HIS UNDERSTANDING THAT THE AGENT

SHALL SO INFORM THE BUYER.

Seller: _____

Date: _____

THE SELLER HAS REFUSED TO COMPLETE THE FORM AND HAS REFUSED TO ACKNOWLEDGE HIS FAILURE TO COMPLETE THE FORM.

Broker/Agent: _____

Date: _____

THE BUYER ACKNOWLEDGES RECEIPT OF THIS FORM.

_____ _____ _____ _____

Buyer Date Buyer Date

THE SELLER MAY DISCLOSE ADDITIONAL INFORMATION NOT REQUESTED OF THIS FORM AND MAY RESPOND TO ADDITIONAL INQUIRIES OF THE BUYER."

JAMES H. HUFF, Chairman
APPROVED BY AGENCY: January 27, 1993
FILED WITH LRC: January 28, 1993 at 10 a.m.

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

401 KAR 4:300. Permit timetables for 401 KAR Chapter 4.

RELATES TO: KRS 146.200 to 146.360, 151.140, 224.10-100, 224.10-220

STATUTORY AUTHORITY: KRS 146.270, 151.125, 224.10-100, 224.10-220

NECESSITY AND FUNCTION: KRS 224.10-220 requires the Natural Resources and Environmental Protection Cabinet to prescribe timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. This administrative regulation establishes timetables for permits that are required by 401 KAR Chapter 4, except those permits whose timetables are set out in KRS 146.290 and 151.260.

Section 1. Permit Timetables. The cabinet shall issue its final decision on a complete permit application within the review times specified in this section. A complete permit application shall contain all the administrative and technical information **required by applicable statutes and administrative regulations** [~~necessary for the cabinet to make its decision on the application~~]. (1)(a) Except as provided in Section 2 of this administrative regulation, within thirty (30) calendar days of initial receipt of an application for permits subject to subsections (2) and (4) of this section, the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies which make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(b) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correct the deficiencies within the time frame, the cabinet may return the application.

(c) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies which make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) calendar days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit.

(2) For water withdrawal permits required by KRS 151.140, the review time shall be ninety (90) calendar days after receipt of an administratively complete permit application.

(3) For change of use permits and public hearings for a change of use permit, the review times shall be as specified in KRS 146.290.

(4) For utility right of way and other approvals required by KRS 146.290, the review time shall be sixty (60) calendar days after receipt of an administratively complete permit application.

Section 2. Timetable Exclusions. Time periods which shall not be included in the cabinet's consideration of its decision on an application subject to Section 1(2) or (4) of this administrative regulation shall include:

(1) Time waiting for the applicant to respond to a notice of deficiency;

(2) Time during which the permit, application, decision, or related matter is held in litigation, including but not limited to administrative hearings;

(3) Time during which an opportunity for public hearing or public comment period on a draft or proposed permit is given, and time during which a public hearing is scheduled;

(4) Time waiting for federal, state or local agencies to comment on the permit or to respond to written requests from the cabinet for additional information; and

(5) Other times as agreed to by the applicant and the cabinet.

Section 3. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the timetables under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the **last date for action** [~~maximum period of time~~] that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the time frames or other timetables specified in this administrative regulation may be extended.

Section 4. For permit applications submitted to the division prior to the effective date of this administrative regulation the review times shall be applied as if the application were submitted on the effective date of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: December 29, 1992
FILED WITH LRC: December 30, 1992 at 8 a.m.

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

401 KAR 5:300. Permit timetables for 401 KAR Chapter 5.

RELATES TO: KRS 224.10-100, 224.10-220, 224.16-050(1)
STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220
NECESSITY AND FUNCTION: KRS 224.10-220 requires the Natural Resources and Environmental Protection Cabinet to prescribe timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. This administrative regulation establishes timetables for permits that are required by 401 KAR Chapter 5.

Section 1. Permit Timetables. This section shall apply for permits required by 401 KAR 5:005 and permits for the transportation of produced water required by 401 KAR 5:090. The cabinet shall issue its final decision on a complete permit application within the review time specified in this section. A complete permit application shall contain all the administrative and technical information **required by applicable statutes and administrative regulations** [~~necessary for the cabinet to make its decision on the application~~].

(1) For approvals for the transportation of produced water granted by the cabinet pursuant to 401 KAR 5:090, the review time shall be thirty (30) calendar days after receipt of a complete permit application; and

(2) For permits required by 401 KAR 5:005, the review time shall be forty-five (45) calendar days from receipt of a complete permit application.

Section 2. Timetables for KPDES Permits. This section shall apply for KPDES permits pursuant to KRS 224.16-050(1). The cabinet shall issue its final decision on a complete permit application within 180 calendar days after receipt of an administratively complete permit application, except as provided in Section 3 of this administrative regulation. A complete permit application shall contain all the administrative and technical information **required by applicable statutes and administrative regulations** [~~necessary for the cabinet to make its decision on the application~~].

(1) Within thirty (30) calendar days of initial receipt of an application for a KPDES permit, the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies which make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(2) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correct identified deficiencies within the time frame, the cabinet may return the application, and the filing fees shall be retained by the cabinet.

(3) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies which make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) calendar days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit, and the filing fee shall be retained by the cabinet.

Section 3. Timetable Exclusions. Time periods which shall not be included in the cabinet's consideration of its decision on a KPDES application shall include:

(1) Time waiting for the applicant to respond to a notice of deficiency;

(2) Time during which the permit, application, decision, or related matter is held in litigation, including but not limited to administrative hearings;

(3) Time during which an opportunity for public hearing or public comment period on a draft or proposed permit is given, and time during which a public hearing is scheduled and held;

(4) Time waiting for federal, state or local agencies to comment on the permit or to respond to written requests from the cabinet for additional information;

(5) Time waiting for permit fees to be paid after the cabinet's final permit decision regarding the application is made; and

(6) Other times as agreed to by the applicant and the cabinet.

Section 4. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the **last date for action** [~~maximum period of time~~] that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the timetables or review times specified in this administrative regulation may be extended.

Section 5. For permit applications submitted to the division prior to the effective date of this administrative regulation, the review times shall be applied as if the application were submitted on the effective date of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: December 29, 1992
FILED WITH LRC: December 30, 1992 at 8 a.m.

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

401 KAR 8:101. Approval timetable for 401 KAR Chapter 8.

RELATES TO: KRS 224.10-100, 224.10-220
STATUTORY AUTHORITY: KRS 224.10-110, 224.10-220
NECESSITY AND FUNCTION: KRS 224.10-220 requires the Natural Resources and Environmental Protection Cabinet to prescribe timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. This administrative regulation establishes timetables for approvals that are required by 401 KAR Chapter 8.

Section 1. Approval Timetables. The cabinet shall issue its final decision on a request for a preliminary or final approval of plans and specification reviews within forty-five (45) calendar days of receipt of the complete request for approval. A complete request for approval shall contain all the administrative and technical information **required by applicable statutes and administrative regulations** [~~necessary~~

~~for the cabinet to make its decision on the request for approval~~].

Section 2. Timetable Extensions. (1) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or applicant. If the permits are coordinated, the cabinet shall so notify the applicant and indicate the time frames under which the intermediate and final permit actions shall be accomplished. The established time frame for final action shall not exceed the **last date for action** [~~maximum period of time~~] that is provided for under applicable statutes and administrative regulations, based on all applications being considered and their filing dates.

(2) The applicant and the cabinet may agree that the timetables or review times specified in this administration regulation may be extended.

Section 3. For applications for approvals submitted to the division prior to the effective date of this administrative regulation, the review times shall be applied as if the application were received on the effective date of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: December 29, 1992
FILED WITH LRC: December 30, 1992 at 8 a.m.

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

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**, if agreed to,** 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 **last date for action** [~~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
(As Amended)

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, **if agreed to,** 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 **last date for action** [~~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
(As Amended)

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**, if agreed to,** 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 **last date for action** [~~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.

JUSTICE CABINET
Department of Corrections
(As Amended)

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

RELATES TO: KRS 196.710
STATUTORY AUTHORITY: KRS 196.710
NECESSITY AND FUNCTION: This administrative regulation is necessary to provide the application process and administrative procedures for the community corrections grant programs enacted by the General Assembly in KRS 196.710.

Section 1. Application Process. The director shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications by mailing notices to each county government and judicial **circuit** [~~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 **circuit** [~~district~~]. Prior to submitting a program plan, the board shall approve the application which shall include:

(a) Project overview containing a description of the cities and counties to be served and the general format of the programs;

(b) Letters of certification of need and support from the circuit judge, Commonwealth attorney and the chief executive officer of the governmental unit;

(c) A projected budget detailing the manner in which the funds shall be expended;

(d) Any local funds or contributions allocated to the development and implementation of the program plan;

(e) All of these topics are contained in the form entitled "Kentucky Community Corrections Act Grant Application" which is hereby incorporated by reference. The "Kentucky Community Corrections Act Grant Application" is available for inspection and copying at the Division of Administrative Services, Kentucky Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

Section 3. Department Assistance. The department shall provide consultation and technical assistance for the development of program plans within budget and staffing limitations of the department.

Section 4. Funds Restrictions. Grant funds shall be used for the development and implementation of new or enhanced programs and services for the targeted offenders. Such funds shall not be used to supplant funds previously committed to said programs and services by local or state government.

(1) Grant funds shall not be used for jail operations or the renovation or construction of facilities or the acquisition of land.

(2) Grant funds shall be disbursed on a quarterly basis but the board shall not spend any funds unless services have been rendered [~~upon receipt of monthly reports of actual expenditures incurred~~].

Section 5. Award Procedure. (1) The director shall forward copies of the grant application form hereby incorporated by reference to members of the commission who shall vote on the applications within sixty (60) days of the final deadline. The commission shall make their decision based on priorities established by the commission. The director shall notify the recipient(s) of the grant(s) award(s) within two (2) weeks of the decision.

(2) Grants shall be made on a year-to-year basis with consideration for continued funding until June 30, 1994 after review of submitted progress reports and audit reports. No continuation funding shall be provided to a program which has failed to reduce prison commitments.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 4, 1993 at 11 a.m.

DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:005. Definitions.

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

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

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

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

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

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

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

DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:015. Qualifications.

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

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

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

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

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

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

Section 6. Applicants shall submit high school diplomas or GED equivalency certificates to establish the education qualification of KRS

16.040(2)(d). Five (5) years of full-time employment as a law enforcement officer or police administrator shall suffice to meet the education qualification.

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

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

DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:025. Disqualification.

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

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

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

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

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

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

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

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

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

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

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

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

(11) An applicant tests positive for an unlawful controlled substance **as determined by** ~~[after]~~ a blood or urine analysis.

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

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

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

DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:035. Application.

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

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

Section 2. Failure to submit the application **by the specified due date** ~~[in a timely manner]~~ or to comply with all instructions for completion and submission shall disqualify the applicant from further consideration.

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

DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:045. Written examination.

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
NECESSITY AND FUNCTION: KRS 16.050 requires the State

Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes a written examination.

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

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

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

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

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

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

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

DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:055. Oral interview.

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

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

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

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

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

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

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

For each category, the applicant shall be scored on a range from zero to five (5)**, with five (5) being the highest score and zero being the lowest score**.

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

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
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DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:075. Register.

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

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

Section 2. Applicants who have completed the written examination, the oral interview, the background investigation, and who have not been disqualified shall be placed on the register in rank order, as determined by the combined score of the written examination and the oral interview. **The written examination score shall be combined with the oral interview score to determine placement on the register, with the written examination score constituting forty (40) percent of the final score and the oral interview score constituting sixty (60) percent.** Applicants who receive the same score shall be ranked by random draw**, with veterans receiving preference in accordance with the provisions of KRS 16.040(3)**.

Section 3. The commissioner shall select candidates for employment as cadet troopers in the order of placement on the register, but

may deviate from that order when necessary to correct a manifest **imbalance** [~~underrepresentation~~] of minorities or women in any cadet class, or when the background investigation reveals that a candidate is less suitable for employment than the candidate who occupies the next position on the register.

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

Section 5. The commissioner may remove a candidate from the register for the following reasons:

(1) Upon receipt of reliable information indicating grounds for disqualification or deferral;

(2) When the candidate cannot be located by postal authorities;

(3) When the candidate declines an offer of employment, fails to respond to an offer of employment, or indicates that he [~~or she~~] no longer wishes to be considered for employment;

(4) Upon the expiration of a period of twenty-four (24) months from the date of placement on the register.

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
APPROVED BY AGENCY: February 8, 1993
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DEPARTMENT OF STATE POLICE
(As Amended)

502 KAR 45:115. Appeals.

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

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

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

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

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

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

BILLY G. WELLMAN, Commissioner, Secretary and Chairman
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TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(As Amended)

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" **means, as it** [~~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," **means, as it** [~~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," **means, as it** [~~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," **means, as it** [~~which~~] is applicable to FAP highways only, [~~means~~] a sign erected or located on a school bus shelter.

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

(29) "Routine change of message", **means,** 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", **means,** 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.

(2) [~~(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.

(3) [~~(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 **Section 4(3) of this administrative regulation and KRS 177.863** [~~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.

(4) [~~(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.

(5) [~~(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).

(6) [~~(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.

(7) [~~(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.

(3) 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.

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 **4(3)** [~~3(1)~~] of this administrative regulation **and KRS 177.863**.

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

Section **11.** [~~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.

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

703 KAR 4:010. The formula for determining successful schools.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455
STATUTORY AUTHORITY: KRS 156.070, 158.6455
NECESSITY AND FUNCTION: KRS 158.6455 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and sanctions for certified staff in schools and for certified staff who are not assigned to a school in a local school district. Successful schools must be defined in terms of student achievement of the goals set forth in KRS 158.645, and these goals were adopted by the State Board for Elementary and Secondary Education on December 19, 1991, pursuant to KRS 158.6451. Finally, successful schools must be defined with reference to the statewide assessment program set forth in KRS 158.6453.

Section 1. Definitions. (1) "Accountability index" means the statistic which is the average of the cognitive and noncognitive indices for a school.

(2) "Baseline" means the accountability index score which describes the school's percentage of successful students at the beginning of each biennium.

(3) "Cognitive index" means the statistic which describes school success on the cognitive goals set forth in KRS 158.6451(1)(b).

(4) "Common open-ended questions" means assessment items which are taken by all students in the accountability grades and which require short written answers.

(5) "Declines by five (5) percent or more" means obtains an average accountability index which is five (5) or more points below its baseline for that biennium.

(6) "Declines by less than five (5) percent" means obtains an average accountability index which is less than five (5) points below its baseline for that biennium.

(7) "Maintains the previous percentage of successful students" means obtains an average accountability index not less than the baseline nor equal to or greater than its threshold for that biennium.

(8) "Matrix-sampled open-ended questions" means assessment items which are taken by a sample of students and which require short written answers.

(9) "Noncognitive index" means the statistic which describes school success on the noncognitive goals set forth in KRS 158.6451(1)(c), (d), (e), and (f).

(10) "Percentage of successful students" means the "percentage of successful students" statistic, which shall also be referred to as the accountability index.

(11) "Performance events" means assessment tasks that require students to apply what they have learned in a real-life context.

(12) "Performance levels" means categories of student learning in each of the content areas, i.e., novice, apprentice, proficient, or distinguished.

(13) "Portfolio scores" means the scores assigned by teachers to a collection of a student's best work in a given content area.

(14) "Threshold" means the accountability index score which describes the amount of growth required for a school during each year of the biennium.

Section 2. The data used in the formula for determining successful schools shall be the cognitive and noncognitive data gathered in the statewide assessment program during each biennium pursuant to KRS 158.6453.

Section 3. For the 1992-94 biennium the baseline shall be based on data from the 1991-92 assessment program. For subsequent biennia the baseline shall be based on the average of the two (2) years of assessment data for the most recent previous biennium.

Section 4. The points assigned to each performance level for purposes of computing the cognitive indices shall be: novice = zero; apprentice = two (2); proficient = five (5); and distinguished = seven (7).

Section 5. For purposes of computing the cognitive, noncognitive and accountability indices the data shall be transformed to a scale such that a school with all of its students at the novice level shall receive a score of zero and a school with all of its students at the proficient level shall receive a score of 100.

Section 6. Computing the cognitive index for each content area (writing, reading, mathematics, science, and social studies) shall require determining the percentage of students at each performance level with the following weighting and combining of data:

(1) Writing: portfolio scores - 100 percent;

(2) Reading; common open-ended questions - fifty (50) percent, and matrix-sampled open-ended questions - fifty (50) percent;

(3) Mathematics: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

(4) Science: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent; and

(5) Social studies: common open-ended questions - forty (40) percent, matrix-sampled open-ended questions - forty (40) percent, and performance events - twenty (20) percent.

Section 7. Once the percentage of students at each performance level in each content area has been calculated, each percentage shall be multiplied by the appropriate points described in Section 4 of this administrative regulation and transformed to the scale described in Section 5 of this administrative regulation.

Section 8. The values for attendance rate and transition rate shall be the actual percentage reported. The values for retention rate and dropout rate shall be 100 minus the actual percentage reported.

Section 9. The weights assigned to each noncognitive variable shall be:

(1) Grade 4: attendance rate - eighty (80) percent and retention rate - twenty (20) percent;

(2) Grade 8: attendance rate - forty (40) percent, retention - forty (40) percent, and dropout rate - twenty (20) percent; and

(3) Grade 12: attendance rate - twenty (20) percent, retention - five (5) percent, dropout rate - thirty-seven and five-tenths (37.5) percent, and transition rate - thirty-seven and five-tenths (37.5) percent.

Section 10. To compute the noncognitive index the weights for each noncognitive variable described in Section 9 of this administrative regulation shall be multiplied by the value for each noncognitive variable described in Section 8 of this administrative regulation.

Section 11. To compute the accountability index the cognitive index for each content area and the noncognitive index shall be averaged.

Section 12. A local district's accountability index shall be the weighted average of its schools' accountability indices

Section 13. By January of the first school year in each biennium, the board shall approve a procedure for the calculation of a threshold for each school. A local district's threshold shall be the weighted average of its schools' threshold. For the 1992-94 biennium, a school's threshold shall be its 1991-92 accountability index plus one-tenth (0.1) the difference between 100 and the school's 1991-92 accountability index.

Section 14. To determine whether a school or district is successful, its accountability index for the two (2) years of the biennium shall be averaged and compared to its threshold calculated from the results of the previous biennium. Schools and districts whose average accountability index is equal to or greater than its threshold shall be declared successful.

Section 15. "Creating Thresholds from KIRIS Data", December 2, 1992, is hereby adopted and incorporated by reference. Copies of this document may be inspected, copied, and obtained from the Office of Curriculum, Assessment, and Accountability, Department of Education, 19th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: December 14, 1992
FILED WITH LRC: December 15, 1992 at noon

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

815 KAR 7:010. Administration and enforcement.

RELATES TO: KRS Chapter 198B, **815 KAR 7:025**
STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050
NECESSITY AND FUNCTION: The Kentucky Board of Housing, Buildings and Construction is directed [~~required~~] by KRS 198B.040(7) to adopt and promulgate a mandatory uniform state building code[~~, and parts thereof,~~] which shall establish standards for construction of all buildings in the state. This administrative regulation establishes the administration and enforcement sections of the Kentucky Building Code. This administrative regulation shall replace Article 1 of the BOCA National Building Code/1990 as adopted in 815 KAR 7:025. This amendment is necessary to clarify for building inspectors that they apply the proper code edition when making inspections and changes to satisfy KRS Chapter 13A requirements. [~~This amendment is necessary to clarify or relocate various provisions of the code, most importantly including a statement of records retention requirements and the effect of installation of fire walls in buildings.~~]

Section 1. Definitions [~~Used in Title 815, Chapter 7~~]. (1) "Board of Housing" or "board" means the Kentucky Board of Housing, Buildings and Construction.

(2) "BOCA" means Building Officials and Code Administrators

International, Inc.

(3) "Building " as defined by KRS 198B.010(4).

(4) "Building code official" means an inspector certified by the department in accordance with 815 KAR 7:070 and designated by the department or by a local government as an enforcement official for the Kentucky Building Code pursuant to KRS Chapter 198B.

(5) "Commissioner" as defined by KRS 198B.010(11).

(6) "Department" as defined by KRS 198B.010(13).

(7) "Fire code official" means the State Fire Marshal, fire chief or other enforcement officer designated by the appointing authority of the jurisdiction for the enforcement of the provisions of KRS 227.300 and the Kentucky Standards of Safety (Fire Prevention Code) as set forth in Title 815, Chapter 10 of the Kentucky Administrative Regulations.

(8) "Industrialized building system" or "building system" as defined in KRS 198B.010(18) and shall apply to buildings [~~applies to a building~~] of any size or [~~for any~~] use, all or any component parts of which are of closed construction made from precast concrete panels, or precut wood sections fabricated to individual specifications in an off-site manufacturing facility and assembled in accordance with the manufacturer's instructions.

(9) "KAR" means Kentucky Administrative Regulations.

(10) "KBC" means the Kentucky Building Code as established in this chapter.

(11) "KRS" means Kentucky Revised Statutes.

(12) "Kentucky Standards of Safety" means the Kentucky administrative regulations established by the Commissioner of the Department of Housing, Buildings and Construction pursuant to KRS 227.300 to serve as the fire prevention code for existing buildings as well as a supplement to this code, where applicable.

(13) "Major structural change" means structural alterations and structural repairs made within any twelve (12) month period costing in excess of fifty (50) percent of the physical value of the structure, as determined by comparison of the value of the alterations involved and the replacement value of the structure at the time the plans for the alterations are approved, using the BOCA Chart for Construction Cost.

(14) "Ordinary repair" as defined by KRS 198B.010(21).

(15) "Person" means a person, partnership, corporation or other legal entity.

(16) "Single family dwelling" means a single unit providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which shall [~~is~~] not be connected to any other unit or building.

(17) "Trade-name or brand-name house" means a [~~any~~] single structure made of precut or prefabricated panels, sections or individual pieces which are sold or prefabricated under a name that identifies both the manufacturer and a particular type of structure that the manufacturer makes, and which are assembled on a permanent foundation by conventional home-building and electrical and plumbing installation techniques.

Section 2. Scope. This administrative regulation shall supersede [~~any and~~] all other conflicting administration and enforcement provisions which may be incorporated by reference within the KBC.

(1) General. The provisions of this administrative regulation shall apply to the following:

(a) The construction, alteration, equipment, use and occupancy of buildings and structures;

(b) Additions to buildings and structures; and

(c) Appurtenances to buildings and structures;

whether hereafter erected or, where expressly stated in this regulation, existing; and whether on land, over water, or on water, permanently moored to land, and substantially a land structure.

(2) Prefabricated components. Trade-name or brand-name houses shall be constructed in accordance with the applicable provisions of the KBC.

(3) Single-family dwellings. The provisions of the KBC relating to single-family dwellings that are not trade-name or brand-name houses or industrialized building systems, shall be mandatory only after a local government, by ordinance, extends the application of the KBC to those units. [~~However,~~] The state plumbing code and the national electrical code shall be applicable to single-family dwellings [~~these units,~~] whether or not the local government passes an ordinance. A local government shall not enforce any building code other than the KBC on single-family dwellings [~~such units~~].

(4) Application of references. [~~Unless otherwise specifically provided for within the KBC,~~] All references to articles, [~~or~~] section numbers, or [~~to~~] provisions not specifically identified by number, shall [~~be construed to~~] refer to the [~~such~~] article, section or provision of the KBC.

(5) Exemptions. The provisions of this code relating to the construction, repair, alteration, enlargement, restoration and moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local government authority as historic buildings, subject to the approval of the board of appeals when the buildings are judged by the code official to be safe and in the interest of public health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration and relocation. The code official may require submission of architectural and engineering plans and specifications bearing the professional seal of the designer prior to this determination.

(6) Code remedial. The KBC's [~~shall be construed to secure its expressed~~] intent shall be [~~which is~~] to secure public safety, health and welfare [~~insofar as they are~~] affected by building construction quality, adequate means of egress, light and ventilation, electrical systems, plumbing, energy, boiler safety, persons with physical disabilities [~~handicapped accessibility~~], life safety from hazards of fire and explosion and other disasters. It shall also be the [~~is the further expressed~~] intent of this code to avoid duplicative plan review and inspection of new construction and to maintain [~~gather together in~~] one (1) set of administrative regulations with [~~all~~] the requirements relating to the construction of buildings in the state to enable builders, owners and code officials to be adequately informed.

(7) Other regulations. Other local or state law shall [~~must~~] be consulted to determine the existence of other powers given to the code official, such as those related to demolition or authority over unsafe structures, which are not specifically addressed [~~awarded~~] in this administrative regulation.

(8) Fire safety authority. The State Fire Marshal and the local fire code official shall continue to be the authority having jurisdiction for enforcement of the Kentucky Standards of Safety (Fire Prevention Code) in existing buildings not regulated by this code, and for continued fire safety maintenance in buildings constructed and approved under this administrative regulation.

Section 3. Applicability. (1) General. The provisions of the KBC shall apply to all matters affecting or relating to buildings and structures [~~as~~] set forth in this administrative regulation.

(2) Exemptions. A [~~No~~] person shall not construct a building or structure, extend, repair, remove or alter a building or structure in violation of these provisions, except for ordinary repairs as outlined in Section 4 of this administrative regulation. The [~~and except further that the~~] raising, lowering or moving of a building or structure as a unit necessitated by a change in legal grade or widening of a street shall be permitted if [~~provided~~] the building or structure has not been [~~is not otherwise~~] altered or its use or occupancy changed.

(3) Alternative regulations. A [~~Any requirement essential for~~] structural, fire or sanitary safety [~~of a~~] building requirement necessary [~~which is essential~~] for the safety of the occupants [~~thereof,~~] and which is not specifically covered by this code, shall be determined by other administrative regulations of the department or other applicable law.

(4) Violation. A [~~Any~~] person who violates a [~~any~~] provision of this administrative regulation or any other provision of the Kentucky Building Code shall be subject to the penalties provided in Section 19 of this administrative regulation.

(5) Referenced standards. The standards referenced in this code and listed in Appendix A shall be considered part of the requirements of this code to the prescribed extent of each reference. If [~~Where~~] differences occur between provisions of this code and referenced standards, the provisions of this code shall apply**, and newer editions of the referenced standards may be used to meet the intent of the code in lieu of the adopted edition**.

Section 4. Ordinary Repairs and Maintenance. (1) Repairs. Ordinary repairs to structures may be made without application or notice to the code official. Ordinary [~~, but the~~] repairs shall not include:

(a) The cutting away of any wall or [~~,~~] partition; [~~or~~] [~~portion thereof,~~]

(b) The removal or cutting of any structural beam or bearing support; [~~or~~]

(c) The removal or change of any required means of egress; [~~or~~]

(d) Rearrangement of parts of a structure affecting the exit requirements; or [~~nor shall ordinary repairs include~~]

(e) Activities excluded by KRS 198B.010(21).

(2) Maintenance. All buildings and structures [~~and all parts thereof~~], both existing and new, shall be maintained in a safe and sanitary condition. [~~All~~] Service equipment, means of egress, devices and safeguards [~~which are~~] required by this code **or a previous code** in a building or structure, [~~new or existing,~~] [~~or which were required by a previous code in a building or structure, when erected, altered or repaired,~~] shall be maintained in good working order.

(3) Owner responsibility. The owner or the owner's designated agent shall be responsible for the safe and sanitary maintenance of the building or structure and its means of egress facilities at all times.

(4) Housekeeping inspections. Periodic inspections of existing uses and occupancies shall be made by the appropriate fire code and health officials to insure maintenance of equipment and good housekeeping conditions.

Section 5. Installation of Service Equipment; Unlawful Use. If [~~When~~] the installation, extension, alteration or repair of an elevator, moving stairway, mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electrical wiring, heating system or other equipment are [~~is specifically~~] controlled by the provisions of this code, [~~it shall be unlawful to use~~] this equipment **shall not be used** until a certificate of approval has been issued by the code official or other agency having jurisdiction.

Section 6. Existing Structures. (1) Continuation of existing use. The legal use and occupancy of any structure existing on the date of adoption of this code or for which it has been [~~heretofore~~] approved, may be continued without change, except as is specifically covered in this code and deemed necessary by the code official for the general safety and welfare of the occupants and the public, or as may be required by the Kentucky Standards of Safety (Fire Prevention Code) or an existing structures code adopted by local ordinance. Application of this code to existing buildings shall not apply unless alterations, additions or changes in use as set forth in subsections (2) through (5) of this section are proposed or occur.

(2) Change in use. [~~It shall be unlawful to make~~] A [~~any~~] change **shall not be made** in the use of a [~~any~~] structure which creates [~~, or portion thereof, with~~] the potential of [~~to cause~~] a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without approval of the building code official. If the building code official determines that the structure meets the intent of the provisions of the code governing building construction for the proposed new use and occupancy and the proposed change shall [~~does~~] not result in any greater hazard to public safety or welfare, the building code official shall approve the change. In making this decision, the building code official may require a written opinion from a design professional.

(3) Additions, alterations or repairs. Additions, alterations or repairs may be made to a [~~any~~] structure without requiring the existing structure to comply with all of the requirements of this code, if the work conforms to that required of a new structure. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building, plus new additions, shall not exceed the height, number of stories and area specified for new buildings.

(4) Nonstructural repairs. Nonstructural alterations or repairs [~~to an existing structure~~] which [~~are nonstructural and~~] do not adversely affect a [~~any~~] structural member [~~of any part of the structure~~] having a required fire resistance rating may be made with the same materials of which the structure was [~~is~~] constructed.

(5) Moved structures. Buildings and structures moved into or within the Commonwealth shall comply with the provisions of this code for new buildings and structures and shall not be used or occupied [~~in whole or in part~~] until the certificate of occupancy has been issued by the code official.

Section 7. Department of Building Inspection. (1) Building code official. Each local government [~~singularly or by association with other local governments~~] shall employ a building code official or inspector and other code enforcement personnel [~~as~~] necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned to it by law [~~to it~~].

(2) Appointment. [~~All~~] Local building code officials shall be appointed by the chief appointing authority for the respective jurisdiction[~~s~~] and shall meet the qualifications for the position which may be established by the appointing authority, in addition to the requirements for certification of Kentucky building code inspectors set forth [~~as detailed~~] in 815 KAR 7:070.

(3) Official records. Official records shall be kept of all business and activities of the various local building departments or state building departments specified in provisions of the KBC, and all of these records shall be open to the public for inspection at all appropriate times under the terms and conditions of KRS Chapter 61.

(4) Retention of records. The building code official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections and notices and orders issued. These records shall be retained in accordance with state retention regulations promulgated by the Kentucky Department of Libraries and Archives pursuant to KRS 171.450.

(5) Building size includes firewall. To determine [~~For purposes of determining~~] plan review jurisdiction and necessity for design professionals, the calculation of the total square footage and occupant load for any project shall include areas on both sides of [~~any~~] firewalls.

Section 8. Duties and Powers of the Local Building Code Official. (1) General. The local building code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for the buildings cited in KRS 198B.060(2).

(2) Jurisdiction of Commonwealth. Buildings owned by the Commonwealth shall [~~are~~] not be subject to local plan review, inspection or approval, regardless of size, occupant load or occupancy classification.

(3) Preemptive authority. The board may withdraw or preempt authority for plan review and inspection for code compliance under this code from a local building department if [~~where~~] it finds, upon petition of the department, that the local inspection agency is not adequately performing any portion of its program, allowing [~~and,~~

~~thereafter, allow~~] the department to preempt that portion of a local program.

Section 9. Duties and Powers of the Department. (1) General. It shall be the responsibility of the department to review plans and specifications, issue permits, make inspections and to determine compliance with the KBC for the following buildings:

(a) All buildings classified as assembly occupancies having a capacity in excess of 100 persons, except churches having a capacity of 400 or less persons and 6,000 or less square feet of total floor area;

(b) All buildings classified as educational occupancies;

(c) All buildings classified as institutional occupancies;

(d) All buildings classified as business and mercantile occupancies having a capacity in excess of 100 persons;

(e) All buildings classified as industrial and factory occupancies having a capacity in excess of 100 persons;

(f) All frozen food locker plants;

(g) All buildings classified as high hazard occupancies;

(h) All other buildings containing in excess of three (3) stories or 20,000 square feet of floor area;

(i) All industrialized building systems regardless of occupancy classification; and

(j) All buildings owned by the Commonwealth regardless of occupancy classification or size.

(2) Additional responsibility. A [~~Any~~] local government may petition [~~to~~] the department for additional plan review responsibility in accordance with KRS 198B.060(5) and (6).

(3) Required inspections. The appropriate official shall make all the required inspections, or he may accept reports of inspection by authoritative and recognized services or individuals. [~~; and all~~] Inspection reports shall be in writing and certified by a responsible officer of an authoritative service or by the responsible individual.

(4) Credentials. The building code official and authorized representatives shall carry proper credentials of their respective office for the purpose of inspecting buildings and premises and the performance of duties under this code.

(5) Rulemaking authority. The board shall have the power [~~as necessary in the interest of public health, safety and general welfare,~~] to adopt and promulgate amendments to the code and other rules and administrative regulations which are necessary to implement the provisions of this code. [~~and,~~] By means of the board's appeals [~~board~~] procedures, they may [~~to~~] issue interpretations which shall be binding upon the appellee and the building code officials. The building code official shall implement the provisions of this code to secure its [~~the~~] intent [~~thereof~~].

(6) Accepted engineering practice. In the absence of provisions not specifically contained in this code or final decisions of the appeals board, the administrative regulation, specifications and standards listed in Appendix A, "Referenced Standards" of the 1990 Edition of BOCA National Building Code filed by reference in 815 KAR 7:025, shall be deemed to represent accepted engineering practice with respect to materials, equipment, system or method of construction as [~~therein~~] specified, and shall [~~therefore~~] be acceptable and enforceable where referred to by a specific section of the code.

Section 10. New Materials and Modifications. (1) Alternative materials and equipment. The provisions of this code shall not be [~~are not~~] intended to prevent the use of any material or method of construction not specifically prescribed by this code, if an alternative has been approved. An alternative material or method of construction shall be approved if [~~when~~] the building code official shall find [~~finds~~] that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is[~~, for the purpose intended,~~] at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire-resistance, durability and safety.

(2) Supporting data. Building code officials may accept supporting data from the following sources to assist them in their determinations:

(a) Duly authenticated research reports from BOCA; or

(b) From other approved authenticated sources for [~~all~~] materials or assemblies proposed for use which are not specifically provided for in the KBC.

(3) Used materials and equipment. Used materials, equipment and devices may be used if they have been retested and placed in good and proper working condition and approved for use by the building code official.

(4) Modifications. Where there are practical difficulties involved in carrying out structural or mechanical provisions of this code, the building code official having plan review responsibility shall allow variance or modification to a provision upon application of the owner or the owner's representative, only if the spirit and intent of the law is observed and public health, safety and welfare is not jeopardized. The application for modification and the final decision of the building code official shall be in writing. If [~~When~~] a modification is granted by a local building code official, a copy of the application and the decision shall be forwarded to the department and the local fire code official.

Section 11. Inspections. (1) Preliminary inspections. Before issuing a permit, the appropriate code official shall[~~, if deemed necessary,~~] examine or cause to be examined all buildings, structures and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, or change the use [~~thereof~~]. [~~No~~] Construction shall not begin on buildings covered by this administrative regulation until a local code official has issued a permit for construction and an official representing the department has issued a letter releasing the plans for construction (if the department has plan review responsibility).

(2) Required inspections. After issuing a building or construction permit, the building code official shall conduct periodic inspections [~~from time to time~~] during **the critical construction phase** and upon completion of the work for which a permit has been issued. A record of all examinations, [~~and~~] inspections and [~~of all~~] violations of the KBC shall be maintained in accordance with the Kentucky Records and Retention Plan.

(3) Approved inspection agencies. The building code official may accept reports of approved inspection services and agencies which shall satisfy the requirements of the appropriate governmental entity.

(4) Trade-name dwelling inspections. Inspections for KBC compliance of trade-name or brand-name homes shall be the responsibility of the local building code official.

(5) Off-site construction. In-plant inspections in production and manufacturing facilities for industrialized building systems as well as on-site inspection shall be conducted by the department or its authorized agent pursuant to 815 KAR 7:025. The local building code official shall be responsible for inspection of [~~to inspect~~] these systems for zoning, water supply and sewage disposal, and other applicable local ordinance purposes.

(6) Final inspection. Upon completion of the building, the owner or agent of the facility shall request a final inspection. The building code official shall set a time for the [~~said~~] inspection and notify the owner or agent. If substantial compliance with the approved plans and permit has been achieved, a certificate of occupancy shall be issued, as described in Section 17 of this administrative regulation. If compliance has not been achieved, [~~any~~] violations shall be noted and immediately communicated to the owner, agent or other person holding the permit and the fire code official. It shall be the owner's responsibility to fulfill any compliance deficiencies noted.

(7) Fire code official inspections. The building code official shall cooperate with the fire code official by allowing the fire code official to inspect all buildings during construction. [~~Any~~] Recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official, and if a

certificate of occupancy is issued contrary to the [said] written recommendations, the building code official shall give written notification of his decision to the fire code official and the department at once.

(8) Coordination of inspections. If [Whenever in the enforcement of this code or another code or ordinance] the responsibility of more than one (1) code official of the jurisdiction is involved during the enforcement of this code, another code or ordinance, it shall be the duty of the code officials involved to coordinate their inspections and administrative orders [as fully as practicable] so that the owners and occupants of the structure shall not be subjected to visits by numerous inspectors nor multiple or conflicting orders. If [Whenever] an inspector from any agency or department observes an apparent or actual violation of a [some] provision of [some] law, ordinance or code not within the inspector's authority to enforce, the inspector shall report the findings to the code official having jurisdiction.

Section 12. Right of Entry. (1) Implied consent. Applicants for building permits shall be deemed to consent to inspection during construction and upon completion of construction for the purpose of determining that the building is constructed in compliance with the Kentucky Building Code The inspector may enter [upon] the premises during any reasonable hour.

(2) Enforcement. [In the discharge of duties,] The building code official or authorized representative shall have the authority to enter at any reasonable hour any building, structure or premises in the jurisdiction to enforce the provisions of this code.

Section 13. Application for Permit Required. (1) An application shall be filed, in writing, with the appropriate building code official and a permit shall be obtained before the following:

(a) The construction, enlargement or alteration of a structure; [or]

(b) The change of use as prescribed by Section 6(2) of this administrative regulation; or

(c) The installation or alteration of equipment requiring a permit.

Exception: Ordinary repairs not involving a violation of the KBC shall be exempt from this provision. [When permit required. It shall be unlawful to construct, enlarge or alter a structure; or to change to another use as prescribed by Section 6(2) of this regulation; or to install or alter any equipment for which provision is made or the installation of which is required by KBC, without first filing an application with the appropriate building code official in writing and obtaining the required permit therefor; except that ordinary repairs which do not involve any violation of the KBC shall be exempted from this provision.]

(2) Form of application. The application for a permit shall be submitted to the code official, in writing, [and in a form the code official prescribes] and shall be accompanied by the required fee.

[(3) Description of work.] The application shall contain:

(a) A general description of the proposed work;

(b) The location of the proposed work;

(c) The use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure; and

(d) Any additional information required by the code official.

(3) [(4)] By whom application is made. Application for all permits shall be made by the owner or lessee of the building or structure, or by their agent [of either], or by the licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the owner in fee, it shall be accompanied by a verified written statement by the person making the application that the proposed work is authorized by the owner in fee and that the applicant is authorized to make application. The full names and addresses of the owner, lessee, applicant and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

(4) [(5)] Plans and specifications. The application for the permit shall be accompanied by specifications and plans drawn to scale[,] with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. The building code official shall cooperate with the fire code official by allowing the fire code official to review all plans. Any recommendations made by the fire code official relating to fire safety in construction of a building shall be considered by the building code official and he shall report his decision to the fire code official [at once]. If [When] quality of materials is essential for conformity to the KBC, specific information shall be given to establish the [such] quality of the materials. [; and] The KBC shall not be cited[,] or the term "legal" or its equivalent shall not be used as a substitute for specific information. The building code official may waive the requirement for filing plans if [when] the work involved is of a minor nature.

(5) [(6)] Site plan. [There shall also be] A site plan shall be filed showing, to scale, the size and location of [all] the new construction and all existing structures on the site, [and] the distances from lot lines, the established street grades and the proposed finished grades. The site plan [; and it] shall be drawn in accordance with an accurate boundary line survey.

(6) [(7)] Engineering details. The building code official may require adequate details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the signature of the responsible design professional. Plans for buildings more than two (2) stories in height shall indicate how the required structural and fire resistance rating integrity shall be maintained[,] and where [a] penetrations will be made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(7) [(8)] Time limitation of application. An application for permit for any proposed work shall [should] be considered [deemed to have been] abandoned six (6) months after the date of filing if [, unless the application has been diligently prosecuted or] a permit has not [shall have] been issued. [; except that] The building code official shall grant one (1) or more extensions of time for additional periods not exceeding ninety (90) days each if there is reasonable cause.

(8) [(9)] Amendments to application. [Subject to the limitations of other provisions of this section,] Amendments may be filed to a plan, application or other records which have been submitted, [accompanying the same may be filed] at any time before completion of the work [for which the permit is sought or issued]. The amendments shall be filed with and made [deemed a] part of the original application [and shall be filed therewith].

(9) [(10)] Revocation of permit. The building code official may revoke a permit or approval issued under the KBC if [in case of any] false statements or misrepresentations have been given on [in] the application or [on the] plans.

Section 14. Permit Required. (1) Action on application. The building code official shall examine or cause to be examined all applications for permits and amendments [thereto] within a reasonable time after filing. If the application or the plans do not conform to the requirements of all pertinent laws, the building code official shall reject the [such] application, in writing, stating the reasons for rejection [therefor]. If the building code official finds that the proposed work conforms to the requirements of this code and all applicable laws and ordinances [applicable thereto], he shall issue a permit [therefor] as soon as practicable.

(2) Suspension of permit. A [Any] permit issued shall become invalid if the authorized work has [is] not commenced within one (1) year after issuance of the permit, or if the authorized work has been [is] suspended or abandoned for a period of six (6) months after the time of commencing the work.

(3) Previous approvals. The KBC shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been [heretofore] issued or otherwise lawfully authorized by approved plans, if [so long as the] substantial construction on the

project has commenced within one (1) year from the date the permit was issued.

(4) Signature to permit. The building code official or his authorized subordinate shall attach his signature to every permit[~~, or the building code official may authorize a subordinate to affix the signature thereto~~].

(5) Conditions to permit. The building code official shall record and communicate to the owner or agent, the terms and conditions related to an approval to commence construction.

(6) Approval of part. The building code official shall be [~~is~~] authorized to issue a permit for the construction of foundations or any other part of a building or structure before the [~~entire~~] plans and specifications for the whole building or structure have been submitted, if adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of the permit for the foundations or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure shall be granted.

(7) Approved plans. The building code official shall stamp or endorse, in writing, the corrected approved plans [~~approved,~~] and approved plans [~~that set~~] shall be available at the building site and [~~,~~] open to inspection by [~~of~~] the building code official or an authorized representative at all reasonable times.

(8) Posting of permit. A true copy of the building permit shall be available on the site of operation open to public inspection during the entire construction process [~~time of prosecution of the work and until the completion of the same~~].

Section 15. Conditions of Permit. (1) Payment of fees. A permit shall not be issued until the fees have been paid as prescribed by Section 16 of this administrative regulation. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of the KBC, except as specifically stipulated by modification or legally granted variation as described in the permit.

(2) Compliance with code and other laws. All work shall conform to the appropriate application, [~~and~~] plans and approved amendments for which the permit has been issued [~~and any approved amendments thereto~~], and shall be located strictly in accordance with the approved plot plan and any local ordinances governing the location of the building. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of this code, except as specifically stipulated by modification or legally granted variation as described in the application.

(3) Change in site plan. A lot shall not be changed, increased or diminished in area from that shown on the official plot site plan[~~,~~] unless a revised plan showing the changes, accompanied by the necessary affidavit of owner or applicant, shall have been filed and approved. [~~; except that~~]

Exception: The revised plan shall not be required if the change is caused by reason of an official street opening, street widening or other public improvement.

Section 16. Fees. (1) General. A permit to begin work for new construction, alteration, removal or other building operation shall not be issued until the fees prescribed by law shall have been paid to the department, if applicable, and to the local building department. If [~~, nor shall~~] an amendment to a permit necessitates [~~necessitating~~] an additional fee because of an increase in the estimated cost of the work involved, the permit shall not be approved until the additional fee has been paid.

(2) Special fees. [~~The~~] Payment of [~~the~~] fees for construction, alteration, and for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that may be prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, marquees or other appurtenant structures, or fees of inspections or [~~,~~] certificates of occupancy [~~or other privileges or requirements, both within and without the jurisdiction of building inspection~~].

(3) New construction and alterations. The fees for plan review and inspection and other functions performed by the department pursuant to KRS Chapter 198B shall be paid in accordance with 815 KAR 7:013. Each local government shall adopt reasonable fees for building permits and the performance of functions [~~performed by it~~] pursuant to this code. The fees shall be designed to comply with KRS 198B.060(18).

Section 17. Certificate of Occupancy. (1) New buildings. A building or structure [~~hereafter erected~~] shall not be used or occupied [~~in whole or in part~~] until the appropriate building code official has issued a certificate of occupancy in accordance with this administrative regulation. [~~; except that~~]

Exception: A building for which a permit was legally granted prior to the effective date of this administrative regulation may be constructed and occupied under the provisions of relevant administrative regulations in force at the time the permit was issued, if substantial construction has commenced within one (1) year from the date the permit was issued.

(2) Alterations. A building or structure [~~hereafter~~] enlarged, extended or altered to change from one (1) use group to another as described in Section 6(2) of this administrative regulation, [~~in whole or part,~~] shall not be occupied or used under that new use until a certificate shall have been issued by the building code official[~~,~~] certifying that the work has been completed in accordance with the provisions of the approved permit.

(3) Change in use and occupancy. After a change of use has been made in a building or structure, [~~the reestablishment of~~] a prior use **shall not be reestablished** that would not have been legal in a new building of the same type of construction [~~shall be [is] prohibited~~] unless the building complies with all applicable provisions of this code. A change from one (1) prohibited use, for which a permit has been granted, to another prohibited use shall be deemed a violation of this code.

(4) Temporary occupancy. Upon the request of the holder of a permit, the building code official shall issue a temporary certificate of occupancy for a building or structure[~~, or part thereof,~~] before the entire work covered by the permit has been completed, if [~~provided~~] that portion or portions may [~~can~~] be occupied safely without endangering life or public welfare prior to full completion of the building or structure [~~without endangering life or public welfare~~].

(5) Certificate information. If [~~When~~] a building or structure is entitled to a certificate [~~thereto~~], the building code official shall issue a certificate of occupancy within ten (10) days after written application. The certificate shall certify compliance with the provisions of this code and the purpose for which any portion of the building or structure may be used [~~in its several parts~~]. The certificate of occupancy shall contain a citation of the edition of the Kentucky Building Code under which compliance was required. It may also specify the following information:

(a) The use group, in accordance with the provisions of Article 3 of the KBC;

(b) The maximum live load on all floors as prescribed in Article 11 of the KBC;

(c) The occupancy load in the building or structure and all parts thereof as defined in Article 3 and Article 8 of the KBC; and

(d) Any special stipulations and conditions of the building permit.

Section 18. Posting Structures. (1) Posted use and occupancy. A [~~Every~~] building or [~~and~~] structure or any portion of a building or structure [~~and part thereof~~] designed for business, factory and industrial, high hazard, mercantile, or storage use (use group B, F, H,

M, or S), as defined in Article 3 of the KBC, shall have [be] posted on all floors [by the owner, with] a suitably designed placard stating the use group and the occupant load of the building or structure. The placard shall be in a form designated by the department and [. The placard] shall be securely fastened to the building or structure in a readily visible place. It shall be the owner's responsibility to assure placement of the placard. [, stating the use group and the occupant load.]

(2) Posted occupant load. A [Every] room constituting a place of assembly shall have the occupancy load of the room posted in a conspicuous place, near the main exit from the room. Approved signs shall be installed and maintained in a legible manner by the owner or an authorized agent. The signs shall be durable and shall indicate the number of occupants permitted for each room use. Place of assembly rooms or spaces which have multiple-use capabilities shall be posted for all approved [such] uses.

(3) Replacement of posted signs. All posted signs shall be furnished by the owner and shall be of a permanent design. The signs shall not be removed or defaced and, if lost, removed or defaced, shall be immediately replaced.

Section 19. Violations and Remedies. (1) Unlawful acts. A [It shall be unlawful for any] person, firm or corporation shall not [to] erect, construct, alter, extend, repair, remove, use or occupy any building or structure or equipment regulated by the KBC[, or cause same to be done,] contrary to or in conflict with or in violation of any of the provisions of this code.

(2) Notice of violation. The building code official shall serve a notice of violation or order on the person responsible for erection, construction, alteration, extension, repair, removal, demolition, use or occupancy of a building or structure in violation of this code or in violation of a detailed statement or a plan approved under this code [thereunder], or in violation of a permit or certificate issued under the provisions of this code. The order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

(3) Prosecution of violation. If the notice of violation is not complied with promptly, the building code official shall request the legal counsel of the jurisdiction to institute [the] appropriate legal action [proceeding at law] or in equity to restrain, correct or abate the violation or to require the removal or termination of the unlawful use of the building or of the order or direction made pursuant thereto.

(4) Penalties. A [Any] person who [shall] violates a provision of the KBC or [shall] fails to comply with [any of] the requirements of the KBC [thereof] or a person who [shall] erects, constructs, alters or repairs a building or structure in violation of an approved plan or proper direction of the code official[,] or of a permit or certificate issued under the provisions of the KBC, shall be subject to the penalties [as may be] provided by KRS 198B.990 and other applicable law.

(5) Injunctive relief. The department or any local agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existed prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of the KBC.

(6) Hindering an inspection. A [No] person shall not hinder an inspector enforcing [any of] the provisions of this code in the performance of the inspectors lawful duties under this chapter.

Section 20. Emergency Measures. (1) Vacating structures. If, in the opinion of the building code official [When], during construction on a building for which a permit shall be [is] required, [in the opinion of the building code official,] there is actual and immediate danger of failure or collapse of a building or structure or a portion of a building or structure [any part thereof] which would endanger life[,] or if a building or [when any] structure or a portion of a building or [part of a structure] has fallen and life is endangered by [the] occupation of the building or structure, the building code official shall be [is hereby] authorized and empowered to order and require the inmates and occupants to vacate the building or structure [same forthwith]. The building code official shall cause to be posted at each entrance to the building a notice reading as follows: "This structure is unsafe and its use or occupancy has been prohibited by the building code official." It shall be unlawful for any person to enter the building or structure except for the purpose of making the required repairs or of demolishing the building or structure [same].

(2) Temporary safeguards. If [When], in the opinion of the building code official, there is actual and immediate danger of collapse or failure of a building or structure (over which the building code official has jurisdiction) which would endanger life, pursuant to KRS Chapter 198B and this administrative regulation, the building code official shall order the necessary work or special inspection to be performed [done] to render the building or structure or any portion of the building or structure [part thereof] temporarily safe.

Section 21. Stop Work Order. (1) Notice to owner. Upon notice from the building code official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, the work shall be immediately stopped. The stop-work order shall be in writing and shall be given to the owner of the property involved, [or] to the owner's agent, or to the person doing the work. The stop-work order [; and] shall state the conditions under which work may be resumed.

(2) Unlawful continuance. A [Any] person who shall continue [any] work in or about the structure after having been served with a stop-work order, except the [such] work [as] that person is directed to perform to remove a violation or unsafe condition, shall be liable to the restraints provided in Section 19 of this administrative regulation.

Section 22. Local Board of Appeals; General. Local appeals boards may be appointed to hear appeals from the decisions of the local code official in accordance with the provisions of KRS 198B.070.

Section 23. Appeals Board Procedures. (1) General. [All] Appeals from the decisions of building code officials shall be conducted in accordance with the appeals provisions of KRS 198B.070.

(2) Appeal by fire code official. Decisions rendered by the building code official with respect to enforcement of the Kentucky Building Code on any building may be appealed by the local fire code official of the jurisdiction if the fire code official is aggrieved by that decision.

(3) Application procedure. Appeals to the board shall be in writing and shall be addressed to the Commissioner of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601; Attention: Appeals Board. Appeals shall include citations of those provisions of the Kentucky Building Code which are at issue, an explanation of why the decision of the state building code official or local building code official relative to those provisions is being contested and a copy of the decision rendered by the local appeals board, if any.

Section 24. Professional Architectural and Engineering Services. (1) General. All design for new construction [work], alteration, repair, expansion, addition or modification work involving the practice of professional architecture or engineering, as defined by KRS Chapters 322 and 323, shall be prepared by Kentucky-licensed professional architects or engineers and all plans, computations and specifications required for a building permit application for the work shall bear the required signature and seals of [thereof by] the design professionals, as required by law.

(2) Special inspections. If [When] construction on a building began prior to approval by the building code official or the construction does not conform to the approved plans or the standards required

by the code, the building code official may require special inspections and reports [thereof] if necessary to assure safety.

(3) Fees and costs. [All] Fees and costs related to the performance of special inspections by professional services shall be borne by the owner.

Section 25. Proof of Insurance. (1) Compliance with law. The issuance of a building permit shall be contingent upon presentation of an affidavit, as required by KRS 198B.060(10).

(2) General applicability. Compliance with this section may be achieved by having an affidavit of general applicability for all permits to be taken during the life of the construction company on file in the office of the code official issuing the permit. The affidavit shall state that the contractor and all persons working in association with that contractor comply, or will comply, with the worker's compensation and unemployment insurance laws.

Section 26. Alternative Codes; Applicable Federal Codes. If [Whenever] the department has entered into a contractual obligation requiring enforcement of applicable federally approved codes, the department shall approve plans and make inspections[;] using those federal codes as an alternative to other applicable provisions of the KBC, so long as equivalent safety shall be [is] maintained. Any facility of an occupancy type subject to review by the federal codes may use this section.

Section 27. Day Care Centers; Fire Safety Requirements. Family child day care homes, group day care homes, day nurseries and child day care centers which comply with the provisions of the Life Safety Code, NFiPA Pamphlet #101, shall be deemed to have satisfied all the fire safety requirements of the Kentucky Building Code.

[Section 28. Effective dates; General. Until December 31, 1990, the department shall accept plans in compliance with the requirements of either the 1987 Edition BOCA Code or the 1990 Edition, together with any Kentucky amendments [thereto]. After December 31, 1990, all plans shall be designed to conform to the 1990 Edition of the BOCA Code as set forth in this regulation and 815 KAR 7:025.]

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: January 29, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(As Amended)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135 [224.814, 224.820]
STATUTORY AUTHORITY: KRS 224.60-135 [224.820(5)], 227.300
NECESSITY AND FUNCTION: KRS 224.60-135 [224.820(5)] requires the State Fire Marshal to promulgate administrative regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This administrative regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals and to determine financial capability through proof of insurance. This amendment is necessary to clarify the type of insurance and coverage included and create a probationary certificate when the applicant does not comply with the level of experience required. [This amendment is necessary to delete OSHA requirements for medical training, etc., is inappropriate at the certification stage, and to reduce the experience requirements and to provide appropriate review of competency.]

Section 1. Definitions. [Definitions in this section shall apply to this regulation.] (1) "Certified contractor" means any individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this administrative regulation to engage in the business of removal and closure, only, but the certification shall be limited to closure and removal, only.

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a tank or an underground storage tank or any of its components that has caused a release of a product from the system or the modification of the tank or a system component. "Repair" shall not include routine maintenance or cathodic protection applied to existing installations.

(4) "Remove or removal" means permanently taking an underground storage tank or any of its components out of service by removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(6) "Underground storage tank" means as defined by KRS 224.810.

(7) "UPST system" means an underground storage tank defined by KRS 224.810 and used solely for the storage of petroleum and petroleum products.

Section 2. Effective April 1, 1991. (1) A permit for the installation of any UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit is a certified contractor, and the applicant assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair or close any UPST system unless the installation, removal, repair or closure is made by a certified contractor and unless the installation, removal, repair or closure of the system complies with applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A company may be the certified contractor and may engage in the activities regulated by this administrative regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this administrative regulation.

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of any anchoring devices, backfilling to the level of the UPST system and strapping, if any;

(c) Final inspection of an installation after components of the piping have been connected, field coated and cathodically protected;

(d) Final pressure testing of any component of the tank or piping components of the UPST system;

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) Any time during the repair project in which components of the piping are connected;

(d) Any time during the repair project in which the UPST or its associated piping is pressure tested;

(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices;

(f) The addition of leak detection devices or spill and overfill devices.

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the closing in which components of the UPST system are disconnected or capped.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or any of its components;

(c) All testing associated with the cleaning and purging processes;

(d) Any time during the removal in which components of the UPST system are disconnected or capped.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall meet all of the following application requirements:

(1) The applicant shall submit an application to the State Fire Marshal, on the form furnished by the State Fire Marshal and outlined in Section 11 [~~10~~] of this administrative regulation, accompanied by a nonrefundable fee of $150; and

(2) The applicant shall be an individual, and shall be at least eighteen (18) years of age; and

(3) The individual shall verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site, closure and removal of UPST systems, as required by Section 6 of this administrative regulation; and

(4) The individual shall complete the examination requirements of Section 7 of this administrative regulation; and

(5) Upon application or prior to the issuance of the certificate, the individual shall provide proof of financial capability for taking corrective action and for compensating third parties for bodily injury and property damage by submitting certificates of general liability insurance in the minimum amount of $500,000 and pollution liability insurance in the minimum amount of $25,000 per occurrence [~~for taking corrective action and for compensating third parties for bodily injury and property damage~~]; and

(6) If the individual wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, **that he has participated** [~~the person's participation~~] in the installation of, performance of repairs on site to, closure of, or removal of a minimum of six (6) underground storage tanks. Of the participations, a minimum of three (3) shall have involved the installation of UPST tanks [~~systems~~]; or

(2) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements by one-third (1/3).

(3) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(4) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6(1) of this administrative regulation, the applicant may receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination [~~to satisfactorily pass~~]; and

(2) An applicant **shall complete** [~~has completed~~] three (3) tank installations within one (1) year of the issuance of the certificate; and

(3) All UPST activities **shall** comply with applicable codes and statutes; and

(4) An applicant shall not remove, close, backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a $100 add-on inspection fee for each site **where** [~~for which~~] a tank is removed, closed or installed.

Section 8. [~~7.~~] Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal only.

(4) An applicant may request permission to take the examination orally, upon good cause shown.

(5) An [~~To satisfactorily pass the written examination, the~~] applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(6) An [~~Any~~] applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(7) Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(8) All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(9) With [~~When~~] the application [~~is filed~~], the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. [~~8.~~] Certification and Renewal Procedures. (1) Effective April 1, 1991, the State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7 of this administrative regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if any of the following occurs:

(a) The applicant fail**s** [~~ed~~] to provide the information required by the application form prescribed by the State Fire Marshal and outlined in Section 11 [~~10~~] of this administrative regulation; or

(b) The applicant fail**s** [~~ed~~] to provide the insurance certificates or the fee required for application and examination; or

(c) The applicant fail**s** [~~ed~~] to comply with the experience and education requirements of this administrative regulation; or

(d) The applicant **does** [~~did~~] not successfully pass the examination required by this administrative regulation; or

(e) The applicant **makes** [~~made~~] a misrepresentation or submit**s** [~~ted~~] false statements with the application.

Section 10. [~~9.~~] Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation may be suspended or revoked by the State Fire Marshal for any of the following reasons:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required code relating to installation, repair, closure or removal; or

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, close, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:040); or

(3) The certified contractor obtained the certification through fraud or misrepresentation.

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance, is no longer employed by the company in whose name the certificate was issued.

Section 11. [~~10.~~] Application Form for Certification of Underground Petroleum Storage Tank Contractors.

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: ____Full ____Remover
Application Fee: $150
Examination: $25 ___Yes ___No
(Remit by check or money order only. Payable to: Kentucky State Treasurer)

FOR OFFICE USE ONLY
Rec'd (Date) _____
Money Rec'd _____
Application # _____
Certification # _____

PLEASE PRINT OR TYPE AND SIGN

1. Full Name of Qualifying Person _____
2. Permanent Residence _____
   Street/Box Office Number
   City _____ County _____ State _____ Zip _____
3. Telephone: _____
   Residence Business
4. Birthdate _____ 5. Social Security # _____
6. Place of Birth _____
   City County State
7. Company Name _____
   Company Address _____
   Street/Box Office Number
   City _____ County _____ State _____ Zip _____
8. Certificate to be issued in:
   _____ Company Name _____ Individual Name
9. Send Mail to: _____
   Company Address/#7
   _____
   Permanent Residence/#2
10. List any schools or training seminars concerning tank installations which you have attended:

Title	Presented By	Date(s)

11. With whom did you most recently apprentice as a tank installer?
    Business name: _____
    Address: _____
    Street City State Zip
    Person who supervised you: _____
    Period of apprenticeship:
    From _____ To _____
    Month Yr Month Yr
12A. Number of years experience as a tank installer: _____
12B. Number of years experience as a tank remover: _____
13. Approximate # of tank installations you have:

	Supervised?	Participated in?
Bare/asphalt coated steel	_____	_____
Fiberglass	_____	_____
Fiberglass coated steel	_____	_____
Cathodically protected steel (STI-P3)	_____	_____
Dual containment (excavation liner)	_____	_____
Dual containment (double wall tank)	_____	_____
TOTALS	_____	_____

14A. Approximate number of piping installations you have:

	Supervised?	Participated in?
Black iron/galvanized	_____	_____
Copper	_____	_____
Fiberglass	_____	_____
Cathodically protected steel	_____	_____
Dual wall	_____	_____
TOTALS	_____	_____

14B. Approximate number of tank removals you have:
Supervised _____ Participated in _____

15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover.

Name	Address	Telephone #
1.		
2.		

3. _____

16. Attach proof of general liability insurance. (Certificate of Insurance from a company authorized to do business in Kentucky)
17. Attach proof of pollution liability insurance. ([~~Policy~~] Certificate **of insurance** from **an authorized insurer countersigned by** a licensed Kentucky agent or **from an eligible surplus lines insurer obtained through a** Kentucky surplus lines broker; surety bond from a Kentucky **authorized** [~~licensed~~] company or an irrevocable letter of credit from an FDIC Kentucky Domicile Bank)
18. Attach experience, listing of jobs (i.e., name of project, company name, dates, city, county, state, size and number of tanks, etc.) for qualifying individual.

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

Signature of Applicant for Company

Date

NOTARIZED BY:
State of _____
County of _____
Subscribed and sworn to before me this _____day of _____, 19____

Notary Public
My Commission expires _____

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
DENNIS L. DECKER, State Fire Marshal
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 15, 1993 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Commission on Fire Protection Personnel
Standards and Education
State Fire Marshal's Office
(As Amended)

815 KAR 45:020. Commission meetings and proceedings.

RELATES TO: KRS 95A.040, 95A.050(1)
STATUTORY AUTHORITY: KRS 95A.050(1), (3)
NECESSITY AND FUNCTION: This administrative regulation sets forth definitions [~~to be used in this chapter~~] as well as rules and procedures governing the manner and form of meetings and proceedings initiated and conducted by the commission. This amendment is necessary to comply with KRS Chapter 13A drafting rules and LRC staff recommendations including specifying **the** actual **number of** voting members required for certain agency actions.

Section 1. Definitions. [~~As used in this chapter unless the context requires otherwise:~~] (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education.

(2) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(3) "Department" means the Department of Housing, Buildings and Construction.

(4) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(5) "Fire department" means and includes a fire department organized under KRS Chapter 75, a fire protection district, a volunteer fire department, or a municipal, county or urban-government fire department.

(6) "Fire protection personnel" means an [~~and includes, but is not limited to, any~~] employee or member of a "fire department" [~~as defined in subsection (5) above,~~] whether paid or unpaid, who is engaged in any of the following:

(a) Fire prevention;

(b) Inspecting buildings for compliance with building, fire, energy and life-safety codes and compliance with the Architectural Barriers Act;

(c) Fire suppression;

(d) Fire and arson investigation;

(e) Fire-related emergency medical and rescue work; [~~and~~]

(f) Other allied fields recognized and approved by the commission.

(7) "Fire protection instructor" or "fire service training officer" means any person certified, pursuant to KRS 95A.040(2)(b) as qualified to instruct fire protection personnel.

Section 2. (1) Voting on reports, recommendations, and contracts. In order for any of the following decisions or actions to be made, at least eight (8) appointed members of the commission shall have cast affirmative votes. [~~Whenever the commission is requested, or decides, to recommend~~]

(a) Recommending administrative regulations to the commissioner pursuant to KRS 95A.050(3) to establish procedures for certification that training and education programs meet minimum standards pursuant to KRS 95A.040(2)(a);

(b) Entering [~~to enter~~] into contracts with other agencies or persons pursuant to KRS 95A.040(2);

(c) Recommending [~~to recommend~~] to the commissioner administrative regulations prescribing the qualifications and certification procedures for fire protection instructors pursuant to KRS 95A.040(2)(b); or

(d) Making [~~to make~~] studies, recommendations and reports to the Governor or legislature pursuant to KRS 95A.040(1)[~~, at least six (6) appointed members of the commission shall have cast affirmative votes for any such decision or action~~].

(2) Public meetings. It shall be the policy of the commission that all its proceedings shall be open to the public and to the press and other news media representatives, unless forbidden by law. This policy shall also apply to [~~likewise governs~~] the proceedings of any subcommittee of the commission.

(3) Parliamentary rules. The commission shall adopt appropriate [~~from time to time such~~] rules for the orderly conduct of commission or subcommittee meetings [~~as they may deem proper~~].

(4) Complaints; advisory opinions. At any regular meeting, the commission may receive complaints, render decisions, deliver advisory opinions, or authorize or request studies and reports by personnel in the State Fire Marshal's Office for any of the purposes set forth in KRS 95A.040, 95A.050, and any administrative regulation adopted thereunder.

(5) Subcommittees. The commission may establish and govern the [~~such~~] subcommittees of its members as it may deem advisable or desirable for the orderly conduct of its business.

Section 3. Administrative Support for Commission. (1) Staff services. Personnel of the division shall provide administrative and technical services to the commission as the commissioner deems necessary or desirable, upon the request of the commission.

(2) Training services. The commission may contract with the Department for Audit and Technical [~~Occupational~~] Education to develop curricula and training delivery plans, in conjunction with that department's advisory committee, for the entire range of local fire

department duties, technology and activities. In addition, the Department for Audit and Technical [Occupational] Education may furnish school facilities in and among the vocational and technical schools under its jurisdiction for this [such] training. The Department for Audit and Technical [Occupational] Education may be awarded a sum from the commission's budgeted funds in order to pay the salary of a clerk to assist the Department for Audit and Technical [Occupational] Education with maintenance of records and files and the performance of other clerical tasks associated with training of fire protection personnel and instructors and the certification of fire protection personnel, instructors and training programs.

(3) Codes enforcement. The commission may contract with the division to provide training to fire protection personnel in building, fire and life-safety codes enforcement, energy code enforcement, Architectural Barriers Act enforcement, and the legal and administrative aspects of fire safety and building inspections.

Section 4. Coordination among Agencies. Upon approval by the commission, the Department for Audit and Technical [Occupational] Education may provide on-job field training and classroom training of instructors and fire protection personnel and may be reimbursed by the commission for such functions as may be permitted by law. Jefferson Community College, Northern Kentucky University, Eastern Kentucky University, and any other qualified person or agency, may provide faculty or educational services, lodging, meals or other administrative support for the training of instructors and fire protection personnel, and may be reimbursed [therefore] in accordance with a contract entered into by the commissioner pursuant to KRS 95A.050(2) and in furtherance of any purpose assigned by the law to the commissioner, the department, or the commission relating to the training or provision of technical assistance to fire protection personnel.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(As Amended)

815 KAR 45:035. Education incentive.

RELATES TO: KRS Chapter 95A
STATUTORY AUTHORITY: KRS 95A.240
NECESSITY AND FUNCTION: KRS 95A.240(1) authorizes the Commission on Fire Protection Personnel Standards and Education to issue such administrative regulations as are necessary to properly administer the [Professional] Firefighters Foundation Program Fund. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of local governments and individual paid firefighters to share in the fund. This amendment is necessary to comply with technical requirements of KRS Chapter 13A and to add the forms for applying for incentive pay.

Section 1. Definitions. [As employed in the Kentucky Professional Firefighters Program Fund administrative regulations, the following words and phrases have the following meanings:]

(1) "Allowable sickness, injury or other medical causes" **means** [for the purpose of this administrative regulation shall mean] reasons for which time off the job is granted by the local government for sickness, injury, or other medical causes.

(2) "Certified training" means firefighter training given by a certified instructor and approved and recorded by the commission.

(3) "Commission" means **as defined by KRS 95A.210(1).** [the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.]

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) [(4)] "Fiscal year" means the period July 1 through June 30 of each twelve (12) month period.

(6) "Fund" as defined by KRS 95A.210(2).

(7) [(5)] "Full-time firefighters" means individuals who work a minimum of 2,080 hours per year as a member of a fire department or fire protection district. This definition is intended to cover jobs involving the suppression, investigation, inspection and prevention of emergency situations, but does not include public safety officers or any peace officer who has responsibility for the prevention and detection of crime other than arson.

(8) [(6)] "Incentive pay" means monies from the fund used to supplement compensation paid to full-time paid firefighters.

(9) [(7)] "Leave of absence" for the purpose of this administrative regulation shall mean a leave granted by the local government by which the firefighter is employed.

(10) "Local government" as defined by KRS 95A.210(3).

Section 2. Eligibility. Each local government which meets the following requirements shall be eligible to participate and share in the distribution of funds if [when] it has made application on forms prescribed by the commission and outlined in Section 6 of this administrative regulation and if the commission has determined that the local government has met the eligibility criteria as stated in KRS 95A.230.

(1) The commission shall review the qualifications of firefighters employed by local fire department units after the effective date of this administrative regulation[,] to determine the basic training, if any, which the firefighter may be required to successfully complete prior to being eligible to participate in the fund.

(2) **The fire department shall comply** [Requires compliance] with all rules and administrative regulations issued by the commission to facilitate the administration of the fund and further the provisions of KRS Chapter 95A.

(3) **The fire department shall comply** [Requires compliance] with all provisions of law applicable to local firefighters.

(4) Any firefighter who does not possess a high school degree or its equivalent and who has been deemed eligible to participate in the fund pursuant to KRS Chapter 95A who terminates firefighter service, forfeits his [such] eligibility and **shall** [must] meet the minimum educational requirement to reparticipate in the fund.

(5) A [Any] firefighter who possesses sufficient training to meet the basic training requirements established by the commission and who terminates or is granted a leave of absence from firefighter service for a period exceeding one (1) year (365 days) shall forfeit his [s such] eligibility and shall [must] meet the minimum training requirements ([as] set forth in subsection (6) of this section) to reparticipate in the fund. If his separation or leave of absence does not exceed one (1) year, he shall be considered eligible for participation in the fund.

(6) If [Should] an individual firefighter is [be] off duty due to allowable sickness, injury, or other medical cause in his first year of employment, he shall have an additional amount of time equal to the required time off to acquire the balance of his initial 400 hours of required training. After the first year an individual shall also have the additional amount of time equal to the required time off to acquire his 100 hours of required training to maintain his eligibility.

(7) A copy of the high school diploma or GED certificate for each firefighter, if [where] required, shall [must] be maintained by the local

unit and shall [must] be available for review by appropriate commission personnel

(8) If, after having successfully completed a certified basic training course, a firefighter transfers from one (1) participating local unit to another, he shall be eligible to receive payments from the fund if [providing] he continues to meet the requirements of the fund as established [set down] by the commission.

(9) If a firefighter transfers from one (1) fire department to another, paid or volunteer, all certified training he has received [by him/her] shall be recognized by the fire department to which he[/she] has transferred and shall be considered toward his[/her] eligibility for participation in the fund.

(10) A [No] firefighter shall not receive monies from this fund for employment with more than one (1) employer and [in no instance] shall not receive dual payment.

Section 3. Participation Requirements. (1) [Participation in the Professional Firefighter's Incentive Pay Program during the first fiscal year of the program's existence (January 1 - June 30, 1981) shall require that application be made to the commission within the dates of August 1, 1980 through October 20, 1980. Thereafter,] Application shall [must] be made [annually] by local governments for new [or continued] participation. Applications shall be on the applicable forms in Section 6 of this administrative regulation and shall be accepted from February 1 through April 30 of each year for payment to begin July 1 of that fiscal year. Local governments failing to make application within the specified dates shall not be considered for participation until the next application filing period.

(2) The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to any local government that does not comply with the requirements of KRS Chapter 95A or the rules and administrative regulations issued by the commission [thereunder].

Section 4. Local Unit Distribution of Funds. (1) The local unit shall include the incentive compensation paid to each firefighter from the fund as a part of the firefighter's salary in determining all payroll deductions.

(2) The local unit shall provide each firefighter with a check stub or separate receipt upon which the gross amount of incentive funds paid to the firefighter shall be [is] identified.

(3) The local unit shall disburse incentive funds during the month for which the funds are requested.

(4) The local unit shall maintain records to document that each participant devotes sufficient hours performing fire service training to qualify him for incentive pay.

Section 5. Local Audits. (1) The local unit may be audited by the department pursuant to established procedures.

(2) For audit purposes, the local unit shall maintain accurate financial records. These [Such] records shall include, but are not limited to, the following:

(a) Books of original entry;
(b) Source documents supporting accounting transactions;
(c) The general ledger;
(d) Subsidiary ledgers;
(e) Personnel and payroll records;
(f) Cancelled checks; and
(g) Any related document and record.

(3) These records shall be retained by the local unit until destruction is authorized by the commission**, or applicable requirements of the Department of Libraries and Archives**.

Section 6. Application Forms for Incentive Pay. (1)(a) Application for incentive pay.

APPLICATION FOR INCENTIVE PAY

Commission on Fire Protection
Personnel Standards & Education
1047 U.S 127 South
Frankfort, KY 40601
(502) 564-3473

CHECK ONE
( ) New Application
( ) Renewal
Paid Firefighters
Incentive

ATTENTION: Please type or print the following information.

1. Applicant:
   City of:
   Date:
   County of:
2. Name of Fire Department:
   F.D.#:
3. Name of Fire Chief:
   Phone:
4. Name and Title of the Authorized Fiscal Office of Local Unit:
   Name:
   Title:
5. **Attach a sheet of paper with the name of all full-time paid firefighters,** [Enter on the attached sheet each full-time paid firefighter's name,] their position (i.e., chief, lieutenant, engineer, driver, etc.) within the fire agency and their annual base salary, if applicable.
6. Name of Chief Executive Officer of Jurisdiction:

I hereby certify that the information contained herein is true and correct to the best of my knowledge. In addition, if this application is approved, I accept and will comply with provisions of KRS Chapter 95A and the general conditions contained herein, and such further rules, regulations and policies as may be reasonable prescribed by the Commission on Fire Protection Personnel Standards and Education.

Signature of Chief Executive Officer:
Date Signed:
Title:
Subscribed and sworn before me this _____ day of _____, 19___.
My commission expires:
Notary Public:

X X X X X X X X X X X X X X X X X X

(b) Paid Firefighters Foundation Incentive Program Form. To be completed and filed with application form in (1)(a).

PAID FIREFIGHTERS FOUNDATION INCENTIVE PROGRAM

TO BE RETURNED WITH APPLICATION

Local Unit Name:
Local Unit #:
Fire Department Name:
Fire Department #:
Quarter ending:

Name of Firefighter last name first	New X	Social Security Number	Date Employed	Annual Comp.	Total # Hours Annually	Assigned Duty Position

XXXXXXXXXXXXXXXX

(2) For requesting funds from the Paid Firefighter's Foundation Incentive Program.

REQUEST FOR FUNDS PAID FIREFIGHTER'S FOUNDATION INCENTIVE PROGRAM

RETURN TO:

Commission on Fire Protection
Personnel Standards and Education
1047 U.S. 127 South
Frankfort, KY 40601

Application #:

1A Fire Dept. Name:
1B Fire Dept. #:

INCENTIVE REQUEST

1. Requesting unit:
   Name:
   Address:
   City:
   State:
   Zip Code:
2. Funds requested for the month of:
3. Number of eligible firefighters:
4. Incentive pay funds requested:
5. Preceding month's incentive funds requested:
6. Preceding month's incentive funds paid out:
7. Difference between lines 5 and 6:
8. If difference exists, explain reason for shortage or overage in incentive pay funds or pension funds:

PENSION REIMBURSEMENT

9. Number of firefighters
   x HAZCERS 18.47% = $38.48 per person =
   x CERS 8.83% = $18.40 per person =
   x OTHER ____% = $___ per person =
   TOTAL PENSION FUNDS REQUESTED
10. Signature of Authorized Fiscal Officer:
    Title:
    Date:

IMPORTANT: Please report at the bottom of this form any change in the name, address or phone number for the Mayor, County Judge, Fire Chief or Fiscal Officer.

Change of Name, Address, Phone Number:

Name: _____ Mayor or
Address: _____ County Judge
Phone Number: _____ Fire Chief
_____ Fiscal Officer

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(As Amended)

815 KAR 45:050. Requirements for obtaining firefighter's training facility grants.

RELATES TO: KRS 95A.040, 95A.262(3), (4) [~~17.250~~], 45A.080, 322.360

STATUTORY AUTHORITY: KRS 95A.260(1), 95A.262 [~~17.250(4)~~]

NECESSITY AND FUNCTION: KRS 95A.262 [~~17.250~~] requires that prior to any expenditures of funds for the purpose of constructing new or upgrading existing training facilities for firefighters, plans shall [~~must~~] be submitted to and reviewed by the Commission on Fire Protection Personnel Standards and Education. The purpose of this administrative regulation [~~these regulations~~] is to set out standards and procedures for determining the amount and use of the funds to be expended from the Firefighter's Training Center Fund. This amendment is necessary to comply with KRS Chapter 13A drafting rules as requested by LRC staff and to add the forms to apply for firefighters training facility grants.

Section 1. Definitions. (1) "Commission" [~~for the purpose of these regulations shall~~] means **as defined by KRS 95A.210(1).** [~~the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.~~]

(2) "Cost estimate" [~~for the purpose of these regulations shall~~] means an itemized list of labor, items or materials needed and their estimated cost at the time of bidding. It may [~~can~~] also mean the estimated cost of land or buildings to be purchased.

(3) "Quotations or bids" means it [~~for the purpose of these regulations~~] shall contain the same information as cost estimates.

Section 2. Eligibility. (1) To qualify to receive aid under the Firefighter Training Center Fund, fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized fire departments or groups or associations of fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth, shall [~~must~~] maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(2) Any fire department or entity eligible for and receiving funding pursuant to this administrative regulation [~~these regulations~~] shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.

Section 3. Participation Requirements. (1) An application as outlined in Section 5 of this administrative regulation [~~There~~] shall be submitted to the commission. The [~~an~~] application [~~which~~] shall contain, but not be limited to the following:

(a) A letter of application, containing a general statement of intent;

(b) A list of fire departments and agencies that will use the facility;

(c) A list of what is available to the applicant, such as land, free labor or materials, etc.; [~~and~~]

(d) The name of an agent or contact person;

(e) A drawing or sketch of the proposed training center, as well as building drawing if applicable; and

(f) A cost estimate [~~as stated in the definitions of these regulations~~].

(2) All applications shall comply with KRS **45.750** [~~45.075~~] through 45.800 applicable to capital construction projects statutes and the requirements stated in subsection (1) of this section.

(a) Quotations or bids shall be obtained from at least three (3) suppliers for all expenditures of less than $10,000.

(b) Expenditures exceeding $10,000 or in excess of the requirements of KRS 424.260, whichever applies, shall require advertisement in newspapers prior to letting the bid to inform the public and suppliers of the needs of the fire department and assure that purchases will be at the lowest cost.

(c) Capital construction [~~projects~~] exceeding the cost of $25,000, shall require bidding, advertisement and the services of an architect or professional engineer registered in the state of Kentucky.

(d) Equipment expenditures exceeding $50,000 shall comply with paragraphs (a), (b) and (c) of this subsection and shall be submitted to and approved by the Capital Construction and Equipment Oversight Committee.

(3) Permits shall be obtained for all electrical installations; all plumbing installations; all fuel installations; and boiler and pressure vessel installations.

Section 4. Processing Applications. (1) The commission shall review the applications and, subject to funds available, shall recommend to the State Fire Marshal which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(2) [~~No~~] Funds shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(3) If funds are granted to an applicant and are not to be used for the purpose granted, the applicant's agent shall contact the commission through its administrator directly, giving the reason any change is required or desired in the original plan; and resubmit new plans and cost estimates which shall be approved by the commission; or return the funds.

(4) Granted funds shall not be held longer than twelve (12) calendar months after the date of the grant check without reasonable progress toward the purpose of the grant. If no progress has been made or there is insufficient progress in the consideration of a majority of the commission members after twelve (12) months, the remaining funds shall be returned.

(5) If [~~When~~] expenditures are made, receipts for funds expended during each quarter shall be sent by the 15th of the following month. Receipts for January, February and March shall be in the hands of the Commission Administrator by the 15th of April and so on.

(6) Maintenance of the training facilities and equipment purchased with the granted funds shall be the responsibility of the applicant. A reasonable fee may be charged for use of the facilities by others than the applicant's members. These fees are to be used for the maintenance of the facilities or equipment.

(7) Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 5. Training Facility Grant Application Forms. (1) Training Facility Grant Application.

COMPILER'S NOTE: The following application is new material in this administrative regulation. However, since lines are included in the application, we are not underlining this new material.

TRAINING FACILITY GRANT APPLICATION

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601

ALL QUESTIONS MUST BE ANSWERED OR APPLICATION WILL BE REJECTED

Please type or print

Name of Requesting Agency:
Address:
City:
County:
Zip:
Contact Person:
Telephone Number:

Yes No 1. Does each department of the requesting agency maintain twelve (12) firefighters, one (1) chief and operate at least one (1) operational fire apparatus?

Yes No 2. Does each department of the requesting agency maintain a roster of a minimum of fifty (50) percent certified firefighters?

Yes No 3. If applicant is an organization, are all member departments aware of the application?

4. List all departments which will utilize the facility on a separate sheet.

5. Number of personnel utilizing facility?

6. Number of days the facility was used last year?

7. List departments and agencies utilizing facility last year on a separate sheet.

8. Nearest similar facility.

Yes No 9. Will your facility be available to other/all departments?

10. Explain on a separate sheet your facility maintenance funding method.

Yes No 11. Does requesting agency hold the title to the property? If no, please explain.

12. Location of facility.

13. List of completed projects on facility as of this date.

1._____ 2._____
3._____ 4._____

14. Please check the project this application is for:

_____ I Drill tower
_____ II Burn/smoke building
_____ III Drafting pit
_____ IV Multipurpose building
_____ V Special project

Yes No 15. Are blueprints or drawings available? If no, they must be submitted prior to disbursement of funds if your request is approved.

16. Estimated cost of this project:

I, the undersigned, hereby attest that all questions have been truthfully answered to the best of my knowledge. I have read and will comply with 815 KAR 45:050 and if reasonable progress is not made on the project granted, the grant is subject to forfeiture. I further attest that I have full authority to sign this document.

Signature:
Title:
Date:

(2) Quarterly Progress Report Form.

QUARTERLY PROGRESS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:
Quarter of _____ through _____
_____ Quarterly Report
_____ Final Report
Title of Project:

Start report here (add continuation pages as needed)

Signature of Recipient:
Typed Name and Title of Recipient:
Date:

(3) Quarterly Financial Status Report Form.

QUARTERLY FINANCIAL STATUS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:
Quarter of _____ through _____
_____ Quarterly Report
_____ Final Report

Monies Paid to: Amount Paid:

1. _____
2. _____
3. _____
4. _____
5. _____

Total Spent this Quarter:

I certify that to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

Signature of Authorized Certifying Official:
Typed Name and Title of Certifying Official:
Date:

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of the State Fire Marshal
(As Amended)

815 KAR 45:080. Volunteer fire department aid.

RELATES TO: KRS Chapter 95A, 136.392
STATUTORY AUTHORITY: KRS 95A.262(2)
NECESSITY AND FUNCTION: The Commission on Fire Protection Personnel Standards and Education is required by KRS 95A.262 to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation sets out standards and procedures for determining the use of volunteer fire department aid. This administrative regulation contains the substance of 815 KAR 46:010 which has been repealed.

Section 1. Definitions. (1) "Certified firefighter" means an individual who has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually.

(2) "Certified training" means firefighter training given or verified by an instructor certified pursuant to 815 KAR 45:090 and recorded by the commission.

(3) "Commission" means **as defined by KRS 95A.210(1).** [~~the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.~~]

(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with sufficient space to carry fire hose and other fire suppression equipment.

(5) "Full-time paid firefighter" means an individual who works for a minimum salary of $8,000 annually and works a minimum of 2,080 hours per year as an employee of a fire department or fire protection district that is recognized by the Department of Housing, Buildings and Construction or the Commission on Fire Protection Personnel Standards and Education.

(6) "Volunteer fire department" means a fire department recognized by the Department of Housing, Buildings and Construction upon recommendation of the commission, which has a membership consisting of less than fifty (50) percent of its members being full time paid firefighters.

(7) "Newly formed department" means a fire department which has organized to the point of having a minimum of twelve (12) members, a chief and having either in their possession or on order at least one (1) operational fire apparatus. The department shall also have available from any source for the year in which the allotment is to be made funds, equipment, land and buildings of sufficient value to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) To qualify to receive aid under the volunteer fire department aid law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments registered as nonprofit corporations shall maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus, as required by KRS 95A.262(2).

(2) Any fire department or entity eligible for and receiving **aid**, pursuant to this administrative regulation, shall have a minimum of fifty (50) percent of its personnel certified as recognized by the commission.

(3) Certification of personnel shall be determined from the firefighter application form outlined in Section 6 of this administrative regulation which **shall be** [~~are~~] submitted to the commission regarding active or inactive status of existing members as well as departure of members and entry of new members.

(4) New members of a fire department shall have two (2) years to become certified before being counted as personnel to determine qualification of the fifty (50) percent of personnel certified for eligibility of state-aid funding.

(5) To be eligible to receive funds, a newly formed fire department shall have fifty (50) percent of its membership with at least half of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each year thereafter, they shall meet the requirements of the commission to retain certification.

Section 3. Participation Requirement. (1) It shall be the responsibility of the chief officer or his appointed representative of each department to furnish any information required by the commission for determination of eligibility.

(2) Any volunteer fire department seeking aid pursuant to the authority of KRS Chapter 95A shall file an application form as outlined in Section 6 of this administrative regulation [~~and~~] which may be obtained from the office of the commission.

Section 4. Verification and Inspection. (1) The application for aid shall contain or have attached a detailed statement of the **following:**

(a) Equipment to be purchased;

(b) Repairs to be made; [~~or~~]

(c) Other purposes for which the allotment is to be expended; [~~and~~]

(d) Other information as the commission may require to give proper consideration to the request.

(2) If a new fire department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.

(3) The fire department aid coordinator shall upon receipt of the application advise the commission as to the validity of the qualifications and approval for grant-in-aid.

(4) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment.

Section 5. Processing Applications for and Expenditure of Aid. (1) Allotment shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(2) If approved allotment is insufficient to cover the cost of equipment or other approved purposes, funds granted for any fiscal year may be deposited in any bank authorized by the applicant to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the commission giving reasons why additional time is needed. This shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(3) If an allotment is granted to a fire department and is not to be used for purchase of equipment for which it was granted, the chief of the fire department shall:

(a) Contact the commission directly giving the reason why he wishes to make a change in the original equipment list; and

(b) Resubmit a new equipment list which shall be approved; or

(c) Refund the grant-in-aid allotment.

(4) Amounts expended for expense of firefighters in attending fire related school or classes shall not exceed ten (10) percent for any one (1) fire department. This shall be an item entered on the regular equipment list.

(5) If expenditure is made of any allotted funds, copies of receipted bills shall be forwarded by the volunteer fire department aid coordinator to the commission. If the grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be furnished **to** the commission. Any false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 6. Participation Forms. (1) Firefighter application form for certification of personnel.

COMMONWEALTH OF KENTUCKY
COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION
FIRE FIGHTER APPLICATION

___Add new firefighter

___Change data on firefighter

___Delete firefighter record

(NOTE: Certified copy of Death Certificate must be attached on delete)

EDUCATION
(check highest level)
___1. Less than 8th grade
___2. 8th grade
___3. Some high school
___4. High school graduate
___5. GED
___6. Some college
___7. Associates degree
___8. Associates degree plus
___9. Bachelors degree
___10. Bachelors degree plus
___11. Masters degree
___12. Masters degree plus

Name (last, first, middle initial):
Social Security #:
Birthdate (month, date, year):
Race: (1) White___ (2) Black___ (3) Other___
Sex: Male___ Female___
Original employment date (month, day, year):
Years of Experience:
County #:
County Name:
Fire Department #:
Employment date in this dept. (month, day, year):
Status (Active/Inactive):
Status Date (month, day, year):
Classification (check one)
Paid: (1)_____
Volunteer: (2)_____
I.F.B. (3)_____
Other (specify) (4)_____
Department Title:

CENTRAL OFFICE USE ONLY:
Certification Code:
Certification Date (month, day, year):

AUTHORIZING SIGNATURE:
Date (month, day, year):

X X X X X X X X X X X X

(2) Application for qualification of volunteer fire department seeking aid.

Date _____

APPLICATION FOR QUALIFICATION

Name of Fire Department:
City:
County:
Legislative District #:
City Classification:
Municipal Rating:
Insurance Rating:

Is department owned and governed by the city ( ) county ( ) or privately ( )

If department is city owned and governed, give the amount of money appropriated by city to fire department for compensation of firefighter:
for purchase of new equipment:
for maintenance of present equipment:
or give lump sum of total allotment by city for any or all needs:
are appropriations granted annually or as needed?

If department is county owned and governed, give the amount of money appropriated by county to fire department for compensation of

firefighter:
for purchase of new equipment:
for maintenance of present equipment:
or give lump sum of total allotment by county for all or any needs:

If department is privately owned, do you solicit fees from property owners on an annual basis for department? yes ( ) no ( ). If so, how much yearly average:
are these fees allotted for compensation of firefighter:
or purchase of new equipment and buildings:
or for maintenance of present equipment and buildings:

Describe any other source of income received by the fire department:

Name of chief:
Address:
Name of assistant chief:
Address:

Number of firefighters on the department subject to call at all times:

Number of full-time paid firefighters:

Number of volunteer firefighters who receive some compensation:

Number of qualified (some training) extra firefighters who can be called to assist either a paid or volunteer department in emergency:

When and how much are the volunteers paid:

Is the chief paid? If so, how much:

Is the assistant chief paid? If not, does he receive compensation as a volunteer assistant chief: If so, how much:

Are all volunteer firefighters appointed by the chief or governing body:

Name of all full-time or regular volunteer firefighters who are carried on personnel roster:

Number of hours of drilling conducted each month:
Who conducts the drills:

How many firefighters attend Kentucky Fire School each year:

Do you have training classes each year conducted by Vocational Education:

How many attend?
Does the chief or any member of the fire department attend any district meetings?
Name of district meeting:

EQUIPMENT UNDER JURISDICTION
OF FIRE DEPARTMENT

Type of Apparatus:
Number and type:
Number and type:
Number and type:
Number and type:
H.P. of motor:
Type of Pump (centrifugal, rotary, piston):
Capacity of Pump:
Pump single or double stage:
Front or midship mounted:
Size of booster tank (gallons):
Number of booster hose reels:

Describe briefly the year and model of each apparatus and give general condition:

Amount of 2 1/2 inch hose (in feet) carried on apparatus:
Amount of 1 1/2 inch hose (in feet) carried on apparatus:
Amount of 3/4 or 1 inch rubber covered hose (in feet) carried on booster reels:

Ladders carried on this apparatus (number, length, type):
Fire extinguishers carried on this apparatus (number, type, size):
Air packs carried on this apparatus (number, size):
Pike poles:
Plaster hooks (number, length):
Hand lights (number, volts):
Crow or claw bars (number):
Hydrant wrenches (number, type):
Spanners (numbers):
Suction hose (feet):
Rope (feet, size):
Hose adaptors (number, type/size):
Foam solution (kind/amount):
Foam nozzles (type):

How often are trucks inspected and motor stated to test motor, battery and tires:

GENERAL INFORMATION

Firefighter coats (number):
Firefighter pants (number):
Firefighter helmets (number):
Firefighter gloves (number):
Fire blankets (number, size):
Firefighter boots (number):
Salvage covers (number, size):
Portable electric generator (number, capacity):
Flood and/or spot lights (number):
Smoke ejector (number, size):
Extra hose kept at fire station (feet, size):
Portable pumps in department (number, size):
On what apparatus is it carried:
Type of alarm system (kind, size):
Where is alarm system located:

Brief description of fire station, type of construction, location, owner, how heated:

How often is hose removed from apparatus to test, drain, clean and reloaded?

What facilities do you have for cleaning and drying dirty or wet hose?

Miscellaneous remarks concerning department:

1. Is your department organized under Chapter 75 as a fire prevention district?
2. Is your department organized under Chapter 67.320 as a county fire department?
3. Is your department incorporated by the Secretary of State? If so, please attach a copy of papers.
4. If none of the above, how is it organized?

Be absolutely sure that either of these four questions be answered correctly, if either question pertains to your department.

Fire Chief:
Approved by Mayor or County Judge Executive:
Chairman:

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of the State Fire Marshal
(As Amended)

815 KAR 45:090. Certification and qualifications of fire protection instructors.

RELATES TO: KRS 95A.040(2)(b)
STATUTORY AUTHORITY: KRS 95A.050(3)
NECESSITY AND FUNCTION: KRS 95.040(b) authorizes the Commission on Fire Protection Personnel Standards and Education to certify fire protection instructors. This administrative regulation sets forth the prerequisite for and justification of those instructors. This administrative regulation contains the substance of 815 KAR 45:030, which is being repealed.

Section 1. Definitions. (1) "Certified firefighter" means an individual who has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually.

(2) "Commission" means **as defined by KRS 95A.210(1).** [~~the Commission on Fire Protection Personnel Standards and Education.~~]

(3) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(6) "Educational methodology course" means a course meeting the objectives of NFiPA 1041 and conducted by:

(a) Kentucky Tech; [~~or~~]

(b) A Kentucky college or university; [~~or~~]

(c) The National Fire Academy; [~~or~~]

(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the Fire Commission; or

(e) An agency approved by the Fire Commission to train within its jurisdiction.

(7) "Fire department" means:

(a) A fire department organized under KRS Chapter 75;

(b) A fire protection district;

(c) A volunteer fire department; or

(d) A municipal, county or urban-**county** government fire department.

(8) "Fire protection personnel" means an employee or members of a fire department as defined herein:

(a) Whether paid or unpaid; and

(b) Who is engaged in:

1. Fire prevention;

2. Inspecting buildings for compliance with building, fire, energy and life-safety codes and the Architectural Barriers Act;

3. Fire suppression;

4. Fire and arson investigation;

5. Fire-related emergency medical and rescue work; or

6. Other allied fields.

(9) "Fire protection instructor" or "fire service training officer" means a person certified pursuant to KRS 95A.040(2)(b) and this administrative regulation as qualified to instruct fire protection personnel.

Section 2. Level I Fire Protection Instructors. Persons certified as Level I fire protection instructors shall be authorized to deliver training to the fire department of which they are a member.

(1) Requirements for certification. An individual **shall** [~~may~~] be certified by the commission as a Level I instructor if satisfactory written evidence is submitted to the commission that the individual meets the following criteria:

(a) Has submitted a completed application that has been approved by his fire chief;

(b) Is a high school graduate or the equivalent;

(c) Has two (2) years experience as a firefighter;

(d) Is a Kentucky certified firefighter; and

(e) Submits proof that he has completed a sixteen (16) hour National Fire Academy Instructional Techniques class or a class that has been approved by the commission.

(2) Certification terms. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) Certification shall be renewed if an applicant has:

1. Taught at least thirty-two (32) hours, prior to the expiration of his certification; or

2. Attended a sixteen (16) hour National Fire Academy Instructor class, or an equivalent approved by the commission.

(b) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on renewal forms as outlined in Section 8 of this administrative regulation.

Section 3. Level II Fire Protection Instructors. Persons certified as Level II instructors shall be authorized to deliver training to any fire department within the Commonwealth upon invitation by that agency.

(1) Requirements for certification. An individual **shall** [~~may~~] be certified by the commission as a Level II fire protection instructor if satisfactory written evidence is submitted to the commission that the individual:

(a) Is qualified by the following:

1. Has certified firefighter status; [~~and~~]

2. Has submitted a completed application that has been approved by his fire chief; [~~and~~]

3. Is a high school graduate or the equivalent; and

4. Has had four (4) years experience as a firefighter; and

(b) Is further qualified by having completed one (1) of the following:

1. Has completed a minimum of thirty-two (32) hours of an educational methodology course; or

2. Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter; or

3. Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum; or

4. Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by this commission.

(2) Certification term. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on renewal forms as outlined in Section 8 of this administrative regulation.

(b) **The following shall be required of an applicant seeking renewal of his certification:**

1. He shall have taught a minimum of sixty (60) hours during his three (3) year certification period; or

2. He shall have taught a minimum of thirty (30) hours and

shall reattend the thirty-two (32) hour educational methodology course. [~~Renewal applicant must have taught a minimum of sixty (60) hours during his three (3) year certification period, or reattend the thirty two (32) hour educational methodology course and taught a minimum of thirty (30) hours.~~]

Section 4. Level III Fire Protection Instructors. Persons certified as Level III fire protection instructors shall be authorized to deliver training to fire departments or to train persons for Level I and II certification and to train Level II instructors to become Level III fire protection instructors.

(1) **An applicant shall be certified as a Level III instructor if the following has occurred:**

(a) The fire department of which the applicant is a member applies for his recognition by the commission as a Level III instructor;

(b) The applicant interviewed with the commission, if requested; and

(c) The following written information has been submitted:

1. A completed application and resume;

2. Proof of the applicant's current certification as a Level II fire protection instructor; and

3. Sufficient evidence of having assisted with the delivery of at least one (1), forty (40) hour educational methodology course or instructional technique class prior to requesting approval as a Level III instructor. [~~Requirements for certification. An individual may be certified by the commission as a Level III instructor if the fire department in which the applicant is a member has applied to be recognized by the Fire Commission to be a Level III instructor and satisfactory written evidence is submitted to the commission that the individual meets the following criteria:~~

~~(a) Has submitted a completed application and resume;~~

~~(b) Is presently certified as Level II fire protection instructor;~~

~~(c) Is interviewed by the commission, if requested;~~

~~(d) Shows sufficient evidence of having assisted with the delivery of at least one (1), forty (40) hour educational methodology course or instructional technique class prior to requesting approval as a Level III instructor.~~]

(2) Certification term. Certification shall be made for a period of three (3) years unless the commission determines that the certification shall be revoked, for cause.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor to submit an application for renewal prior to expiration of certification. Renewal forms shall be as outlined in Section 8 of this administrative regulation.

(b) Renewal applicant **shall** [~~must~~] have delivered at least one (1) educational methodology course or instructional technique class during his three (3) year certification period.

(c) Renewal applicant **shall** [~~must~~] have taught a minimum of sixty (60) hours during his certification period.

(d) Renewal applicant **shall** [~~must~~] attend at least one (1) instructor trainer workshop approved by the commission.

Section 5. Fire Protection Instructor Current Status. (1) A fire protection instructor who is certified by the commission pursuant to this administrative regulation shall be reclassified as a Level II fire protection instructor and shall conform to this administrative regulation.

(2) To retain current certified status as an instructor, an individual shall meet the renewal criteria for the level for which he is certified.

(3) If an instructor does not meet Level II requirements, he shall revert to Level I status.

(4) If an instructor does not meet the criteria for Level I status, his fire protection instructor certification shall be revoked.

Section 6. Revocation of Certification. The commission may revoke certification if, after reasonable notice and a hearing, it is determined that there was:

(1) A material misstatement or misrepresentation in any document furnished the commission to obtain the issuance or renewal of a certification;

(2) Falsification of training records; or

(3) An act of misconduct, negligence, malfeasance.

Section 7. Appeal. (1) A fire protection instructor notified of an intent to revoke his instructor certification, may request a hearing before the commission by submitting **a request to be heard**, in writing, within fifteen (15) days from the date of receipt of the letter of notification.

(2) A hearing shall be conducted at the next regularly scheduled meeting of the commission or within thirty (30) days, whichever is first.

(3) The decision of the commission shall be rendered in writing within ten (10) days of the termination of the hearing.

Section 8. Application and Renewal Forms for Fire Protection Instructor. (1) Level I certification application and renewal form.

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL I FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)
New Applicant___
Renewal___

FOR CENTRAL OFFICE USE ONLY

Date certified__/__/__
Code Level Certified to Teach:
Status Active/Inactive_____
Status Date:__/__/__
Certification Type (V/P)_____

Social Security No.:
Name (last, first, middle initial):
Date of birth (month, day, year):
Fire department #:
Name:
County #:
Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level I Fire Protection Instructor shall be for the purpose of delivering training to the fire department of which they are a member.

Requirements for Certification: An individual may be certified by the commission as a Level I Fire Protection Instructor if satisfactory written evidence is provided to the commission that he is qualified by the following:

- High school graduate or equivalent. (attach copy of diploma or GED certificate):
- Two (2) years experience as a firefighter. Entry date:
- Kentucky certified firefighter. Certification date:
- Applicant has successfully completed a sixteen (16) hour National Fire Academy Instructional Techniques class or its equivalent conducted by:

Agency:

Instructor (signature, #):

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked.

Certification Renewal:
(a) It shall be the responsibility of the fire department to see renewal process is completed if recertification for that instructor is desired.
(b) Renewal applicant must have taught a minimum of thirty-two (32) hours during his three (3) year certification period or reattended a sixteen (16) hour National Fire Academy Instructor Class or equivalent approved by the Fire Commission.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:
Signature of applicant:

X X X X X X X X X X X X X X X X X X

(2) Level II Certification Application and Renewal Form.

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL II FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)
New Applicant___
Renewal___

FOR CENTRAL OFFICE USE ONLY

Date certified__/__/__
Code Level Certified to Teach:
Status Active/Inactive_____
Status Date:__/__/__
Certification Type (V/P)_____

Social Security No.:
Name (last, first, middle initial):
Date of birth (month, day, year):
Fire department #:
Name:
County #:
Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level II Fire Protection Instructor shall be for the purpose of delivering training to the fire department within the commonwealth upon invitation by that agency.

Requirements for Certification: An individual may be certified by the commission as a Level II Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she is qualified by the following:

- High school graduate or equivalent. (attach copy of diploma or GED certificate)
- Four (4) years experience as a firefighter. Entry date:
- Kentucky certified firefighter. Certification date:
- Applicant has successfully completed a minimum of thirty-two (32) hours educational methodology course, meeting the objectives of NFPA 1041 conducted by:

Agency:
Instructor (signature, #):
or
Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter (attach copy of certification)
or
Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum.

Name of institution
Department head signature:
or
Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by the fire commission. (attach copy of certificate)

Agency:
Agency head (signature):

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines sooner that the certification should be revoked.

Certification Renewal:
(a) It shall be the responsibility of the individual instructor and his agency to submit this application for renewal.

(b) Renewal applicant must have taught a minimum of sixty (60) hours during his three (3) year certification period or reattended a thirty-two (32) hour educational methodology course and taught a minimum of thirty (30) hours.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:
Signature of Applicant:

X X X X X X X X X X X X X X X X X X

(3) Level III Certification Application and Renewal Form.

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL III FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)
New Applicant___
Renewal___

FOR CENTRAL OFFICE USE ONLY

Date certified__/__/__
Code Level Certified to Teach:
Status Active/Inactive_____
Status Date:__/__/__
Certification Type (V/P)_____

Social Security No.:
Name (last, first, middle initial):
Date of birth (month, day, year):
Fire department #:
Name:
County #:
Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level III Fire Protection Instructor shall be for the purpose of qualifying Level I and Level II Fire Protection Instructors and preparing Level II Fire Protection Instructors to become Level III Fire Protection Instructors.

Requirements for Certification: An individual may be certified by the commission as a Level III Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she:

- Attach a copy of resume'.
- Presently certified as Level II Fire Protection Instructor
- Applicant has successfully assisted in delivery of an educational methodology class based on NFPA 1041 conducted by:

Agency:
Instructor (signature):

- Applicant may be required to undergo an interview by the commission.

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked.

Certification Renewal:
(a) It shall be the responsibility of the individual instructor to submit this application for renewal prior to expiration of certification.
(b) Renewal applicant must have delivered at least one (1) educational methodology course during his three (3) year certification period; and
(c) Renewal applicant must have taught a minimum of sixty (60) hours during his certification period.
(d) Renewal applicant must attend at least one (1) instructor trainer workshop approved by the Fire Commission.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:
Signature of Applicant:

Section 9. 815 KAR 45:030 is hereby repealed.

GERALD STEWART, Chairman
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 4, 1993
FILED WITH LRC: February 11, 1993 at 4 p.m.

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

902 KAR 100:040. General provisions for specific licenses.

RELATES TO: KRS 211.842 to 211.852, 211.990(4)
STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844
NECESSITY AND FUNCTION: [~~The Cabinet for Human Resources is empowered by~~] KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the regulation and licensing of the possession or use of [~~any~~] sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative [~~The purpose of this~~] regulation [~~is to~~] provides general provisions for the issuance of radioactive material licenses to possess, use, and transfer radioactive material.

Section 1. Applicability. This administrative [~~The provisions of this~~] regulation applies [~~apply~~] to the licensing of [~~all~~] persons who possess, use, or transfer radioactive material within Kentucky.

Section 2. License Requirement. Except for persons exempted by [~~exempt as provided in~~] 902 KAR 100:015 and 902 KAR 100:045, a [~~no~~] person shall not manufacture, produce, receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued in accordance with 902 KAR Chapter 100 [~~pursuant to these regulations~~]. Authority to transfer possession or control by the manufacturer, processor, or producer of [~~any~~] equipment, devices or [~~,~~] commodity, or other products [~~of any equipment, device, commodity, or other product~~] containing radioactive material whose subsequent possession, use, transfer and disposal by other persons are exempted from regulatory requirements [~~source, by product, or special nuclear material, intended for use by the general public~~] may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D. C. 20555.

Section 3. Types of Licenses. (1) Licenses for radioactive material shall be [~~are~~] of two (2) types: general and specific.

(2) Except as [~~otherwise~~] specified in 902 KAR 100:050, [~~these regulations~~] general licenses are effective without the filing of an application with the cabinet or the issuance of licensing documents to the licensee [~~particular persons~~]. The general license is subject to [~~all~~] other applicable requirements of 902 KAR Chapter 100 [~~these~~

regulations] and [any] limitations of 902 KAR 100:050 [the general license]

(3) All specific licenses require the submission of an application to the cabinet and the issuance of a licensing document by the cabinet. The [Such] licenses shall be subject to [all] applicable requirements of 902 KAR Chapter 100 [these regulations] and to [such] limitations [as may be] specified in the licensing document.

Section 4. Filing of Application for Specific Licenses. (1) **An application for "specific license" shall be filed with the Cabinet for Human Resources on "Form RPS-7". The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.** [Applications for specific licenses shall be filed with [on a form prescribed by] the cabinet.]

(2)(a) The cabinet may at a [any] time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the cabinet to determine whether the application should be granted or denied or whether a license should be modified or revoked. Prelicensing visits may be made to the applicant's facility for the purpose of obtaining [additional] information in addition to that furnished in the original application.

(b) If the applicant or licensee fails to respond to a request **in writing forwarded by certified mail** for additional information within thirty (30) days of the date of the receipt of the request, or within another [any] other specified time **if health and safety are threatened**, the cabinet may suspend, modify or revoke the license in accordance with 902 KAR 100:170 or [may] deny the application.

(3) The [Each] application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities if [provided that] the application specifies the [specified such] additional activities and complies with the provisions of 902 KAR Chapter 100 [applicable regulations of the cabinet] relating to specific [such] licenses.

(5) [In his application,] The applicant may incorporate in the application, by reference, information contained in previous applications, statements, or reports filed with the cabinet, if [provided such] references are clear and specific.

[(6) Applications and documents submitted to the cabinet may be made available for public inspection except that the cabinet may withhold, upon request, any document or part thereof from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned.]

Section 5. General Requirements for the Issuance of Specific Licenses. (1) A license application shall be approved if the cabinet determines that:

(a) [(1)] The applicant is qualified by reason of training and experience to use the radioactive material in question for the purpose requested in accordance with 902 KAR Chapter 100 and [these regulations] in [such] a manner as to minimize danger to public health and safety or property;

(b) [(2)] The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(c) [(3)] The issuance of the license will not be inimical to the health and safety of the public; and

(d) [(4)] The applicant satisfies [any] applicable special requirements in 902 KAR Chapter 100 [these regulations].

(2) For [(5) In the case of] an application for a license to receive and possess radioactive material which the cabinet determines will significantly affect the quality of the environment, the following shall apply:

(a) The secretary of the cabinet or his designee shall, before commencement of construction of the plant or facility in which the activity will be conducted, [on the basis of information filed and evaluations made, has concluded, after] weigh[ing] the environmental, economic, technical, and other benefits against environmental costs and consider[ing] available alternatives,

(b) A license application may be approved if the cabinet determines after consideration of the factors described in paragraph (a) of this subsection, that the action called for is the issuance of the proposed license, with [any] appropriate conditions to protect environmental values;

(c) Commencement of construction prior to the determination [such conclusion] shall be grounds for denial of a license to receive and possess radioactive material in the [such] plant or facility. As used in this subsection, the term "commencement of construction" means [any] clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term **shall [does]** not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(3) [(6)](a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (bankruptcy) of the United States Code by or against:

1. The licensee;

2. An entity (as that term is defined in 11 USC 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate (as that term is defined in 11 USC 101(2)) of the licensee.

(b) This notification shall [must] indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and

2. The date of the filing of the petition.

(4) [(7)] Information provided to the cabinet by an applicant for a license or by a licensee or information required by 902 KAR Chapter 100 [these regulations], orders or license conditions to be maintained by the applicant or licensee shall be complete and accurate in all material aspects.

Section 6. Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of KRS 211.842 to 211.852 [the Act] and 902 KAR Chapter 100 [the regulations of the cabinet], the cabinet may [will] issue a specific license authorizing the proposed activity in a [such] form and containing [such] conditions and limitations as it deems appropriate or necessary.

(2) The cabinet may incorporate in a [any] license when issued [at the time of issuance], or thereafter by appropriate rule, 902 KAR Chapter 100 [regulation], or order, or as otherwise specified in [by 902 KAR 100:170 and] Section 14 of this administrative regulation, [such] additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to 902 KAR Chapter 100 [these regulations] as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require [such] reports and the keeping of [such] records, and provide for [such] inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss or theft of licensed material.

Section 7. Specific Terms and Conditions of Licenses. (1) A [Each] license issued pursuant to this administrative regulation shall be subject to [all] the provisions of KRS 211.842 to 211.852, 902 KAR Chapter 100 [the Act, now or hereafter in effect, and to all rules, regulations], and orders of the cabinet.

(2) Neither the license nor a [any] right under the license shall be assigned or otherwise transferred in violation of the provisions of KRS 211.842 to 211.852 [the Act].

(3) Each person licensed by the cabinet under 902 KAR Chapter 100 [~~pursuant to these regulations~~] shall confine his use and possession of the radioactive material(s) licensed to the locations and purposes authorized in the license.

Section 8. Expiration and Termination of Licenses. (1) Except as specified [~~provided~~] in subsection (9) of this section and in Section 9(2) of this administrative regulation, a [~~each~~] specific license shall expire at **midnight on** [~~the end of~~] the day, in the month and year stated in the license [~~therein~~].

(2) A [~~Each~~] licensee shall notify the cabinet promptly, in writing, and request termination of the license if [~~when~~] the licensee decides to terminate all activities involving materials authorized under the license. This notification and request for termination of the license shall include the reports and information specified in subsection (3)(d) and (e) of this section and a plan for completion of decommissioning if required by subsection (4) of this section or by license condition. [~~The termination of activities shall be in accordance with 902 KAR 100:020, Section 21 and this section.~~]

(3) If a licensee does not submit an application for license renewal under Section 9(2) of this administrative regulation, the licensee, on or before the expiration date specified in the license, shall:

(a) Terminate use of radioactive material;

(b) Remove radioactive contamination to the extent practicable except for those procedures covered by subsection (4) of this section;

(c) Properly dispose of radioactive material; [~~and~~]

(d) **The "Disposition of Radioactive Material", "Form RPS-10", shall be filed with the Cabinet for Human Resources. The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.** [~~Submit form RPS-10 "Disposition of Radioactive Material" to the cabinet; and~~]

(e) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the result of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate:

1. Report levels of radiation in units of microrads per hour of beta and gamma radiation at one (1) centimeter and gamma radiation at one (1) meter from surfaces, and report levels of radioactivity, including alpha, in units of disintegrations per minute (or microcuries) per 100 square centimeters removable and fixed for surfaces, microcuries per milliliter for water, and picocuries per gram for solids such as soils or concrete; and

2. Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(4) In addition to the information required under paragraphs (d) and (e) of this subsection, the licensee shall submit a plan for completion of decommissioning if the procedures necessary to carry out decommissioning have not been previously approved by the cabinet and could increase potential health and safety impacts to workers or to the public as in the following cases:

(a) Procedures would involve techniques not applied routinely during cleanup or maintenance operations; or

(b) Workers may be entering areas not normally occupied in which surface contamination and radiation levels are significantly higher than routinely encountered during operation; or

(c) Procedures would result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) Procedures would result in significantly greater releases of radioactive material to the environment than those associated with operation.

(5) Procedures with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(6) The proposed decommissioning plan, if required by subsection (4) of this section or by license condition, **shall** [~~must~~] include:

(a) Description of planned decommissioning activities;

(b) Description of methods used to assure protection of workers and the environment against radiation hazards during decommissioning;

(c) A description of the planned final radiation survey; and

(d) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning.

(7) The proposed decommissioning plan may be approved by the cabinet if the information in the plan demonstrates that the decommissioning **shall** [~~will~~] be completed as soon as is reasonable and the health and safety of workers and the public **shall** [~~will~~] be adequately protected.

(8) Upon approval of the decommissioning plan by the cabinet, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in subsection (3)(e) of this section and shall certify the disposition of accumulated wastes from decommissioning.

(9) If the information submitted under subsection (3)(e) or (8) of this section does not adequately demonstrate that the premises are suitable for release for unrestricted use, the cabinet **shall** [~~will~~] inform the licensee of the appropriate further actions required for termination of license.

(10) A specific license continues in effect, beyond the expiration date if necessary, with respect to possession of residual radioactive material present as contamination until the cabinet notifies the licensee in writing that the license **shall be** [~~is~~] terminated. During this time, the licensee shall:

(a) Limit actions involving radioactive material to those related to decommissioning; and

(b) Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the cabinet notifies the licensee in writing that the license **shall be** [~~is~~] terminated.

(11) Specific licenses **shall** [~~will~~] be terminated by written notice to the licensee when the cabinet determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) A radiation survey has been performed which demonstrates that the premises are suitable for release for unrestricted use; or

(d) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.

[~~(4) Each license will be valid until the cabinet notifies the licensee in writing that the license is terminated.~~]

Section 9. Renewal of License. (1) Applications for renewal of specific licenses shall be filed in accordance with 902 KAR Chapter 100 [~~these regulations~~].

(2) If [~~In any case in which~~] a licensee, not less than thirty (30) days prior to expiration of his existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, the [~~such~~] existing license shall not expire until the application has been finally determined by the cabinet.

Section 10. Amendment of Licenses. (1) Applications for amendment of a license at the request of the licensee shall be filed in accordance with 902 KAR Chapter 100 [~~these regulations~~] and shall specify the respects in which the licensee desires his license to be amended and the grounds for the [~~such~~] amendment.

(2) Every five (5) years or [~~and~~] at the request of the cabinet, the licensee shall be required to amend the license in its entirety by submitting a complete application.

Section 11. Cabinet Action on Applications to Renew or Amend. In considering an application by a licensee to renew or amend his license, the cabinet shall apply the requirements of 902 KAR Chapter 100 [~~applicable criteria set forth in these regulations~~].

Section 12. Inalienability of Licenses. A [~~No~~] license issued or granted under 902 KAR Chapter 100 or [~~these regulations and no~~] right to possess or utilize radioactive material granted by a [~~any~~] license issued under 902 KAR Chapter 100 [~~pursuant to these regulations~~] shall not be transferred, assigned, or otherwise [~~in any manner~~] disposed of, [~~either voluntarily or involuntarily, directly or indirectly,~~] through transfer of control of a [~~any~~] license to any person unless the cabinet [~~shall~~], after securing full information, finds that the transfer is in accordance with the requirements of 902 KAR Chapter 100 [~~provisions of these regulations~~] and gives its consent in writing.

Section 13. Transfer of Material. (1) A [~~No~~] licensee shall not transfer radioactive material except as authorized by [~~pursuant to~~] this administrative regulation.

(2) Except as stated [~~otherwise provided~~] in the license and subject to the provisions of subsections (3) and (4) of this section, a [~~any~~] licensee may transfer radioactive material subject to the acceptance of the transferee:

(a) To a [~~any~~] person exempt from the requirements for a license as specified in this administrative regulation to the extent permitted under the [~~such~~] exemption;

(b) To [~~any~~] persons authorized to receive radioactive [~~such~~] material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. Nuclear Regulatory Commission, or an [~~any~~] Agreement State; [~~or~~]

(c) To [~~any~~] persons otherwise authorized to receive radioactive [~~such~~] material by the federal government or an [~~any~~] agency thereof, the cabinet, or an [~~any~~] Agreement State; or

(d) [~~(c)~~] As otherwise authorized by the cabinet in writing.

(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S. Nuclear Regulatory Commission or an Agreement State or to a general licensee who is required to register with the cabinet, U.S. Nuclear Regulatory Commission or with an Agreement State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by this administrative regulation are acceptable:

(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; if [~~provided, that~~] the oral certification is confirmed in writing within ten (10) days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or when a transferor desires to verify that information received by one (1) of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall meet the requirements of 902 KAR Chapter 100 [~~be in accordance with the provisions of these regulations~~].

Section 14. Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of a [~~any~~] license shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to or violation of KRS 211.842 to 211.852, 902 KAR Chapter 100, or [~~the Act, or by reason, including violation(s), of rules, regulations, and~~] orders issued by the cabinet.

(2) A [~~Any~~] license may be revoked, suspended, or modified, in whole or in part, for:

(a) A [~~any~~] material false statement in the application or in a statement of fact required under provisions of KRS 211.842 to 211.852;

(b) [~~any statement of fact required under provisions of the Act, or~~] Because of conditions revealed by [~~such~~] application or statement of fact; [~~or~~]

(c) A [~~any~~] report, record, or inspection, or other means which would warrant the cabinet to refuse to grant a license on an original application; or

(d) For violation of, or failure to observe [~~any of,~~] the terms and conditions of KRS 211.842 to 211.852 [~~the Act~~], or of the license, or of [~~any~~] rules, 902 KAR Chapter 100 [~~regulations~~], or orders of the cabinet.

(3) Except in cases of willful violation or those in which the public health, interest, or safety requires otherwise, a [~~no~~] license shall not be modified, suspended, or revoked unless, prior to the institution of proceedings [~~therefor~~], facts or conduct which may warrant this [~~such~~] action shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

(4) A licensee whose license is suspended or revoked, shall have a right to a hearing in a manner set forth in 902 KAR 100:170.

Section 15. Retention of Records. (1) A [~~Each~~] person who receives radioactive material in accordance with a license issued under 902 KAR Chapter 100 [~~pursuant to these regulations~~] shall keep records showing the receipt, transfer, and disposal of [~~such~~] radioactive material.

(2)(a) Records of receipt of radioactive material which are required by [~~must be maintained pursuant to~~] subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.

(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after the [~~such~~] transfer.

(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.

(3) [~~All~~] Other records required by 902 KAR Chapter 100 [~~these regulations~~] or by a license condition shall be maintained for the period specified **in 902 KAR Chapter 100** [~~by the applicable regulation or license condition~~]. If [~~In the event~~] the retention period is not specified by 902 KAR Chapter 100 [~~regulation~~] or license condition, the [~~such~~] records shall be permanently maintained unless the cabinet authorizes their disposition upon proper application for their destruction.

(4) Records required to be maintained by 902 KAR Chapter 100 [~~pursuant to these regulations~~] may be the original, a reproduced copy or a microform if duly authenticated by authorized personnel and

capable of producing a clear and legible copy after storage for the period specified by 902 KAR Chapter 100 [~~cabinet regulations~~].

Section 16. Financial Assurance and Recordkeeping for Decommissioning. (1)(a) An applicant for a specific license authorizing the possession and use of unsealed radioactive material, except source material, with a half-life greater than 120 days and in quantities exceeding 10E5 times the applicable quantities set forth in 902 KAR 100:030, Section 2 shall submit a decommissioning funding plan as described in subsection (5) of this section. The decommissioning funding plan shall also be submitted if a combination of isotopes is involved if R divided by 10E5 is greater than one (1) (i.e., unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in 902 KAR 100:030, Section 2.

(b) An applicant for a specific license authorizing the possession and use of more than 100 millicuries of source material in a readily dispersible form shall submit a decommissioning funding plan as described in subsection (5) of this section.

(c) An applicant for a specific license authorizing possession and use of quantities of source material greater than ten (10) millicuries but less than or equal to 100 millicuries in a readily dispersible form shall either:

1. Submit a decommissioning funding plan as described in subsection (5) of this section; or

2. Submit a certification that financial assurance for decommissioning has been provided in the amount of $150,000 using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance **shall** [~~will~~] be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section **shall** [~~is to~~] be submitted to the cabinet.

(2) An applicant for a specific license authorizing possession and use of radioactive material, except source material and sealed special nuclear material sources, with a half-life greater than 120 days and in quantities specified in subsection (4) of this section shall either:

(a) Submit a decommissioning funding plan as described in subsection (5) of this section; or

(b) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by subsection (4) of this section using one (1) of the methods described in subsection (6) of this section. For an applicant, this certification may state that the appropriate assurance **shall** [~~will~~] be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of subsection (6) of this section **shall** [~~is to~~] be submitted to the cabinet.

(3)(a) Each holder of a specific license issued on or after January 1, 1995, which is of a type described in subsection (1) or (2) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(b) Each holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(a) or (b) of this section shall submit, on or before January 1, 1995, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to $750,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in an application for amending the license in its entirety.

(c) Each holder of a specific license issued before January 1, 1995, and of a type described in subsection (1)(c) or (2) of this section shall submit, on or before January 1, 1995, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this section.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material:

(a) Greater than 10E4 but less than or equal to 10E5 times the applicable quantities of 902 KAR 100:030, Section 2, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section divided by 10E4 is greater than one (1) but R divided by 10E5 is less than or equal to one (1) - $750,000.

(b) Greater than 10E3 but less than or equal to 10E4 times the applicable quantities of 902 KAR 100:030, Section 2, in unsealed form. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10E3 is greater than one (1) but R divided by 10E4 is less than or equal to one (1) - $150,000.

(c) Greater than 10E10 times the applicable quantities of 902 KAR 100:030, Section 2, in sealed sources or plated foils other than sealed special nuclear material sources. For a combination of isotopes, if R, as defined in subsection (1) of this section, divided by 10E10 is greater than one (1) - $75,000.

(5) Each decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from subsection (6) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(6) Financial assurance for decommissioning shall be provided by one (1) or more of the following methods:

(a) Prepayment. Prepayment **shall be deposited** [~~is the deposit~~] prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method. If the licensee defaults, these methods guarantee that decommissioning costs shall be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Section 17 of this administrative regulation. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. Surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

1. The surety method or insurance shall be open-ended or, if written for a specified term, such as five (5) years, shall be renewed automatically unless ninety (90) days or more prior to the renewal date, the issuer notifies the cabinet, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the cabinet within thirty (30) days after receipt of notification of cancellation.

2. The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

3. The surety method or insurance shall remain in effect until the cabinet has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund.

1. An external sinking fund **shall be** [~~is~~] a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds **shall** [~~would~~] be sufficient

to pay decommissioning costs at the time termination of operation is expected.

2. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

3. The surety or insurance provisions shall be as stated in paragraph (b) of this subsection.

(d) In the case of a state, or local government licensee, a statement of intent containing a cost estimate for decommissioning or an amount based on the table in subsection (4) of this section, and indicating that funds for decommissioning shall be obtained when necessary.

(7) A person licensed under this administrative regulation shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the cabinet. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the cabinet considers important to decommissioning consists of:

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials like concrete. These records shall include known information on identification of involved nuclides, quantities, forms and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Section 17. Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds shall be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This section establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(1) Financial test. To pass the financial test, the parent company shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The parent company shall have:

1. Two (2) of the following three (3) ratios: A ratio of total liabilities to net worth less than two (2.0); a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1); and a ratio of current assets to current liabilities greater than one and one-half (1.5); and

2. Net working capital and tangible net worth each at least six (6) times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

3. Tangible net worth of at least $10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(b) The parent company shall have:

1. A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

3. Tangible net worth of at least $10 milliion; and

4. Assests located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(c) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure the licensee shall inform the cabinet within ninety (90) days of matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(d)1. After the initial financial test, the parent company shall repeat the passage of the test within ninety (90) days after the close of each succeeding fiscal year.

2. If the parent company no longer meets the requirements of paragraphs (a) and (b) of this subsection, the licensee shall send notice to the cabinet of intent to establish alternate financial assurance as specified in this administrative regulation. The notice shall be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of that fiscal year.

(2) Parent company guarantee. The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(a) The parent company guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the cabinet. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both licensee and the cabinet as evidenced by the return receipts.

(b) If the licensee fails to provide alternate financial assurance as specified in this administrative regulation within ninety (90) days after receipt by the licensee and the cabinet of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor shall provide alternative financial assurance in the name of the licensee.

(c) The parent company guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license

(d) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

RICE C. LEACH, M.D., Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: January 14, 1993
FILED WITH LRC: January 14, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52. 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR

233.90, 233.100, 250, "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, [~~job opportunities and basic skills (JOBS) program participation,~~] cooperation in child support enforcement activities, strikers and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Child" means an individual age seventeen (17) or under or, if eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study before reaching age nineteen (19) or during the month of the 19th birthday.

(2) "Deprivation" means loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.

(3) "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(4) "Principal wage earner" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for AFDC benefits based on the deprivation of unemployment.

(5) "Prior labor market attachment" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for AFDC benefits based on the deprivation of unemployment.

(6) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

[~~(1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.~~

~~(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.~~

~~(3) "Case manager" means the Department for Social Insurance (DSI) individual who:~~

~~(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;~~

~~(b) Aids the JOBS participant by brokering services for the participant;~~

~~(c) Identifies and resolves barriers to the extent possible; and~~

~~(d) Delivers JOBS related services to the participant.~~

~~(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.~~

~~(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self support.~~

~~(6) "Target population" means that group composed of each individual who:~~

~~(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;~~

~~(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;~~

~~(c) Is a custodial parent under the age of twenty-four (24) who:~~

~~1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or~~

~~2. Had little or no work experience in the preceding year; or~~

~~(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.~~]

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A child who is sixteen (16) to eighteen (18) years of age and living in an active JOBS county, in order to determine his status as exempt or nonexempt for participation in the JOBS program, as specified in 904 KAR 2:370.

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child **shall be** [~~is~~] considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

Section 3. Enumeration. (1) Each person included in the AFDC case shall furnish his Social Security card or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security card or apply for a number shall result in the ineligibility of the person whose Social Security number is not verified.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4. [~~2.~~] Residence and Citizenship. (1) Residence. A resident is anyone who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving AFDC benefits from another state.

(2) Citizenship. AFDC shall be provided only to:

(a) Citizens;

(b) Aliens lawfully admitted for permanent residence; or

(c) Aliens otherwise permanently residing in the United States under color of law.

Section 5. [~~3.~~] Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall meet the definition of deprivation as specified in Section 1 of this administrative regulation. [~~be deprived of parental support of a natural or adoptive parent or care due to:~~

~~(a) Death;~~

~~(b) Continued absence from the home;~~

~~(c) Physical or mental incapacity; or~~

~~(d) Effective October 1, 1990, unemployment.~~]

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved. [~~Continued absence from the home.~~]

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) [~~(a)~~] To be considered deprived due to absence, [~~eligible for AFDC,~~] a needy child shall be

physically separated from the parent and:

(a) [1.] The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(b) [2.] The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(2) [(b)] Absence may be voluntary or involuntary.

(a) [1.] Voluntary absence includes:

1. [a.] Divorce;
2. [b.] Legal separation;
3. [c.] Marriage annulment;
4. [d.] Desertion of thirty (30) days or more;
5. [e.] Forced separation of seven (7) days or more; or
6. [f.] Birth out-of-wedlock.

(b) [2.] Involuntary absence includes:

1. [a.] Commitment to a penal institution for thirty (30) days or more;
2. [b.] Long-term hospitalization;
3. [c.] Deportation; or
4. [d.] Single parent adoption.

(3) [(c)] A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

Section 8. Deprivation Due to [(3)] Incapacity. [(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations and the criteria set forth in this subsection.]

(1) [(b)] Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic. [all medical, social, and economic factors involving a particular claimant.]

(2) [(c)] If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the [a] parent's inability to support or care for the child.

(a) [1.] Incapacity exists in a [each] case when the following criteria are met:

1. [a.] It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:
   a. [(i)] Present at the time of application; and
   b. [(ii)] Which has continued or is expected to last for a period of at least thirty (30) calendar days.
2. The thirty (30) day period [This] may include a period in which the claimant is undergoing:
   a. Planned diagnostic studies; or
   b. Evaluation of rehabilitation potential; and
3. [b.] It is determined by nonmedical evaluation that the [such] defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(b) A determination regarding incapacity shall be made by:

1. Field staff if the criteria specified in 904 KAR 2:040, Section 3(2) is met; or
2. The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(c) [2.] Factors to be considered by the medical review team in making the medical determination shall include:

1. [a.] The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and
2. [b.] Competent medical testimony relevant to:
   a. [(i)] Whether a physical or mental defect, illness or impairment exists;
   b. [(ii)] Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and
   c. [(iii)] Whether the defect, illness or impairment is likely to last thirty (30) days. [The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is pertinent to causal relationship and substantiality.]

(d) [3.] Factors to be considered in making the nonmedical evaluation shall include:

1. [a.] The claimant's:
   a. [(i)] Age;
   b. [(ii)] Employment history;
   c. [(iii)] Vocational training;
   d. [(iv)] Educational background; and
   e. [(v)] Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and
2. [b.] The extent and accessibility of employment opportunities available in the claimant's area of residence.

(e) [4.] In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of disabled individuals shall be taken into account; and

1. [a.] Available printed materials that provide information regarding available employment opportunities shall be researched;
2. [b.] The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and
3. [c.] The claimant shall be referred, if necessary, for further appraisal of his abilities.

(f) [5.] A written report shall be made of the determination under this subsection.

(g) [6.] Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to [(4)] Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(2) The determination of the [(a)] principal wage earner (PWE) shall include the following: [. The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.]

(a) [1.] If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

b. [2.] If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) [(4)(b)] of this section.

(c) [3.] Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The [4.] PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) [(b)] Unemployment. A parent shall be considered to be unemployed if:

(a) [1.] Employed less than 100 hours in a calendar month; or

(b) [2.] Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and
2. Is expected to be under the 100 hour standard in the following

month.

(4) [(c)] Prior labor market attachment (PLMA) shall be established [.

~~1. PLMA is met~~] if the parent:

[~~a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of the application;~~]

(a) Attests to an employment history meeting the definition in Section 1(5) of this administrative regulation;

(b) [b.] Within twelve (12) months prior to application, received unemployment compensation; or

(c) [c.] Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) [2.] In determining whether or not criteria in subsection (4)[(c)1a] of this section is met, the following shall be taken into consideration:

(a) [a.] Participation in Community Work Experience Program (CWEP) or Work Incentive Program (WIN) prior to October 1, 1990, and in the Job Opportunities and Basic Skills (JOBS) Program [~~after October 1, 1990,~~] shall be considered as earning an income in determining PLMA.

(b) [b.] Full-time attendance, as defined by the school or institution, [~~in educational activities~~] may be substituted for two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) [c.] Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(6) [(d)] Restrictions. Unemployment shall not exist if the PWE:

(a) [1.] Is on strike;

(b) [2.] Is temporarily unemployed:

1. [a.] Due to weather conditions or lack of work;

2. [b.] If there is a job to return to; and

3. [c.] Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) [3.] Is unavailable for full-time employment;

(d) [4.] Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) [5.] Has not met the criteria of unemployment for at least thirty (30) days;

(f) [6.] Has not applied for unemployment benefits, if potentially eligible;

(g) [7.] Is not:

1. [a.] Registered for work under Section 8 of this administrative regulation; or

2. [b.] Subject to JOBS, as specified in 904 KAR 2:370 [~~under Section 9 of this regulation~~]; or

(h) [8.] Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC- UP eligibility or during the course of receipt of AFDC-UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 10. [4.] Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed; [~~father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin and first cousin once removed.~~]

(2) A relative [~~Also relatives~~] of the half-blood;

(3) [~~and~~] Preceding generations [~~as~~] denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) [~~grand, great, great great or great great great;~~] A stepfather, stepmother, stepbrother, stepsister;

(5) [~~(3)~~] Any person listed in subsections (1) through (4) of this section [~~above~~] if the alleged father [~~parent~~] has had paternity established through the administrative determination process as specified in **Section 11 of this administrative regulation** [~~subsection (9) of this section~~]. [~~An administrative determination of paternity is limited to situations in which the following types of evidence are present:~~

~~(a) A birth certificate listing the alleged parent; or~~

~~(b) Legal documents such as:~~

~~1. Hospital records;~~

~~2. Juvenile court records;~~

~~3. Wills; and~~

~~4. Other court records which clearly indicate the relationship of the alleged parent or relative; or~~

~~(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or~~

~~(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:~~

~~1. School records;~~

~~2. Bible records;~~

~~3. Immigration records;~~

~~4. Naturalization records;~~

~~5. Church documents, such as baptismal certificates;~~

~~6. Passport;~~

~~7. Military records;~~

~~8. U.S. Census records; or~~

~~9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.~~

~~(e) Rebuttal of paternity.~~

~~1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.~~

~~2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.~~]

(6) An adoptive parent, [~~(4) Adoptive parents as well as~~] the natural and other legally adopted child [~~children~~] and other relative[s] of the adoptive parent [~~such parents~~].

(7) The [~~(5)~~] husband or wife of any person[~~s~~] listed in subsections (1) through (6) of this section, [~~above~~] even if the marriage may have terminated, providing termination occurred after the birth of the child.

(8) [~~(6)~~] If the specified relative [~~parent~~] continues to exercise

control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;
(b) Attendance at boarding school;
(c) College or vocational school;
(d) Emergency foster care; or
(e) Short visits with friends or relatives.

~~[Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).~~
~~(2) A child may be eligible to age nineteen (19) if:~~
~~(a) A full time student in a secondary school; or~~
~~(b) The equivalent level of vocational or technical training; and~~
~~(c) Expected to complete the program prior to or during the month of their 19th birthday.~~
~~(3) Full and part time is defined in 904 KAR 2:016, standards for need and amount; AFDC.~~
~~(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:~~
~~(a) Official school or training program vacation;~~
~~(b) Illness;~~
~~(c) Convalescence; or~~
~~(d) Family emergency.]~~

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or
(b) Legal documents such as:
1. Hospital records;
2. Juvenile court records;
3. Wills; and
4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:
(a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and
(b) The parent or caretaker relative provides a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.
(3) Presence of the sworn statement or affidavit specified in subsection (2)(b) of this section will serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity will not be acknowledged.

Section 12. ~~[6.]~~ One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 13. ~~[7.]~~ Strikers. (1) A family shall be ineligible for benefits for any month in which the ~~[natural or adoptive]~~ parent, with whom the child is living is, on the last day of the ~~[such]~~ month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible ~~[No individual shall be considered eligible]~~ for benefits for any month if, on the last day of the ~~[such]~~ month, the relative ~~[such individual]~~ is participating in a strike.

~~[(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.]~~

Section 14. ~~[8.]~~ Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the Department for Employment Services (DES) if:

(a) He resides in a non-JOBS county; or
(b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370 ~~[Section 9(1)(c) of this regulation]~~.
(2) Failure of the PWE to register for work shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered for or is participating in JOBS.

Section 15. ~~[9.]~~ Job Opportunities and Basic Skills (JOBS) Training Program. The technical requirements for participation in the JOBS Program are specified in 904 KAR 2:370. ~~[(1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:~~
~~(a) Is a child who:~~
~~1. Is under age sixteen (16); or~~
~~2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);~~
~~(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;~~
~~(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;~~
~~(d) Is sixty (60) years old or older;~~
~~(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;~~
~~(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;~~
~~(g) Is working at least thirty (30) hours per week;~~
~~(h) Is pregnant and the child is expected to be born within the following six (6) month period;~~
~~(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;~~
~~(j) Is a full time VISTA volunteer.~~
~~(k) Is the parent or other relative personally providing care for a child under six (6) years of age unless the state IV agency assures that child care will be guaranteed.~~
~~(2) Volunteers. All persons in active JOBS counties as specified in subsection (1) of this section may volunteer to participate in the~~

JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(e) Job search which provides group and individual assistance and training with job seeking activities;

(f) On the job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(g) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(4) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not quality the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(5) Self initiated JOBS activities. Self initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self initiated education or training for their JOBS activity. The participant shall be attending:

(a) A JTPA funded training program; or

(b) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(c) An associate degree program which will qualify the participant for a recognized occupation; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;

2. Literacy;

3. Other approved education.

(6) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at intervals determined by the educational providers.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(7) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(8) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

9. Discrimination by an employer based on age, race, sex, color, disability, religious beliefs, national origin or political beliefs occurs;

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;

b. Entry into a spouse abuse center;

c. Natural disasters;

d. Court appearance;

e. Victim of crime; or

f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(9) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;

2. Fails without good cause to participate in the program;

3. Refuses without good cause to accept employment; or

4. Terminates employment or reduces earnings without good cause.

(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:

1. The participant is excluded from JOBS activities and services;

a. For the first failure to comply, until the failure to comply ceases;

b. For the second failure to comply, until the failure to comply ceases or three (3) months, whichever is longer; and

c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual and the second parent, unless the second parent is participating in JOBS.

3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.]

Section 16. [10.] Cooperation in Child Support Enforcement Activities. (1) The Department for Social Insurance shall attempt to secure parental support, and if necessary establish paternity, for children receiving AFDC based on the following voluntary absence deprivation factors:

(a) Divorce;

(b) Desertion;

(c) Birth out-of-wedlock;

(d) Legal separation;

(e) Forced separation; or

(f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section [(1)] inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities. This includes, but is not limited to:

(a) Identifying the absent parent;

(b) Providing information to assist in the location of the absent parent;

(c) Establishing paternity; and

(d) Forwarding child support payments received to the agency.

[and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.]

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child[(ren)] adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

[(5) Specific requirements in determining the existence of good

~~cause and the time limits for providing substantiation of claims are made.~~]

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made, includes, but is not limited to, the following:

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;

2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the absent of alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; and

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the agency conducts an investigation of a good cause claim, it shall not contact the absent or alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. To enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact is unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of AFDC; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

(a) Document the case;

(b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

a. The best interests of the child; or

b. The physical or emotional health of the child or the relative; or

2. Good cause exists and support activities can be initiated without endangering the physical or emotional health of the child or the relative; or

3. Good cause does not exist.

(c) Advise the specified relative in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) The relative shall be ineligible for benefits; and

(b) The agency shall attempt to obtain a protective payee to administer the AFDC payment on behalf of the child.

(8) If, after the exclusion from the grant for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Add the specified relative to the case effective with the date the individual states he will cooperate;

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. [~~11.~~] Potential Entitlement for other Programs. (1) An applicant or recipient [~~All applicants or recipients~~] shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Failure to apply for another benefit or comply with its requirements results in ineligibility for AFDC.

(3) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

[~~Section 12. Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.~~

~~Section 13. Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.~~

~~Section 14. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.~~]

Section 18. [~~15.~~] Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the AFDC program, with the exception of JOBS participation, are being incorporated effective May 1, 1993. These forms include:

(a) PA.1C Supplement D, revised 3/92;

(b) PA-121, revised 8/87;

(c) PA-125, revised 6/83;

(d) PA-125 Supplement A, revised 6/83;

(e) PA-125 Supplement B, revised 12/82; and

(f) PA-511, revised 10/92. [~~Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.~~]

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, Secretary
APPROVED BY AGENCY: January 25, 1993
FILED WITH LRC: February 9, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

904 KAR 2:111. Repeal of 904 KAR 2:110.

RELATES TO: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6, 34 CFR 668.2-.4, 690.2(1)-(6), 45 CFR 400.40-.104; 400.140-.156, Federal Register, Volume 57, Number 202 (pages 47718 through 47739)

STATUTORY AUTHORITY: KRS 194.050, 8 CFR 207.1, 208.2, 209.1-.2, 212.5, 245.1-.6, 34 CFR 668.2-.4, 690.2(1)-(6), 45 CFR 400.40-.104; 400.140-.156

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. The administrative regulation 904 KAR 2:110, Refugee assistance, sets forth the eligibility criteria and types and amounts of assistance for refugees residing in Kentucky. A waiver which was approved by the Department for Health and Human Services, Office of Refugee Resettlement, permitted the cabinet to cease operation of the refugee Cash and Medical Assistance (CMA) Program effective March 1, 1992. **[~~Further, the notice in the Federal Register, Volume 57, Number 202 (pages 47718 through 47739), is an announcement of the Office of Refugee Resettlement's plan to replace the CMA program with the Private Resettlement Program (PRP). Under the PRP program, state agencies will no longer be responsible for administering refugee assistance. The PRP program will become effective January 1, 1993.~~]** Therefore, administrative regulation 904 KAR 2:110, Refugee assistance, is no longer necessary.

Section 1. 904 KAR 2:110, Refugee assistance; is hereby repealed.

MIKE ROBINSON, Commissioner
FONTAINE BANKS, Secretary
APPROVED BY AGENCY: January 25, 1993
FILED WITH LRC: February 2, 1993 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

905 KAR 8:090. Personal care assistance services.

RELATES TO: KRS 205.900 through 205.920

STATUTORY AUTHORITY: KRS 194.050, 205.910, 205.920

NECESSITY AND FUNCTION: KRS 205.910 requires the Cabinet for Human Resources to establish an eligibility standard for personal care assistance services which shall take into consideration the unique economic and social needs of severely physically disabled adults. The Department for Social Services has promulgated administrative regulations pursuant to KRS 205.920 that shall enable provisions of KRS 205.905-205.920, concerning personal care assistance services to be implemented.

Section 1. Definitions. (1) The definition of "cabinet" is governed by KRS 205.900(1).

(2) The definition of "evaluation team" is governed by KRS 205.900(2).

(3) The definition of "personal care assistance services" is governed by KRS 205.900(3).

(4) The definition of "qualified agency or organization" is governed by KRS 205.900(4).

(5) The definition of "secretary" is governed by KRS 205.900(5).

(6) The definition of "severely physically disabled adult" is governed by KRS 205.900(6).

(7) "Activities of daily living (ADLs)" means feeding, bathing, and dressing oneself; transferring and toileting.

(8) "Administrative support personnel" means staff designated within the contract agency who offer technical assistance to, and monitor the activities of the qualified agency.

(9) "Approved plan" means the response written by the contract agency to the request for proposal and agreed upon by the Division of Aging Services.

(10) "Authorized representatives of the cabinet" means the Director of the Division of Aging Services or official designee.

(11) [~~(14)~~] "Contract agency" means the agency with whom the Cabinet for Human Resources has contracted to administer the personal care attendant program.

(12) [~~(11)~~] "Evaluation team's recommendations" means the official response of the evaluation team signed by all three (3) team members.

(13) [~~(12)~~] "Income eligibility criteria" means a formula to determine eligibility for the personal care attendant program which addresses the "unique economic needs of severely physically disabled adults" as governed by KRS 205.910(1).

(14) [~~(13)~~] "Instrumental activities of daily living (IADLs)" means cooking, shopping, laundry, housekeeping, and other assistance necessary to maintain a person in his own home.

(15) "Living arrangement" means a noninstitutional environment for a physically disabled adult who lives alone or with family or others.

(16) "Mentally capable" means an adult who is able to recruit, hire, fire, and supervise the persons who provide personal care assistance services. There is no provision for a proxy.

(17) "Participant" means a person accepted into the personal care attendant program who has met the eligibility requirements of a severely physically disabled adult.

(18) "Personal care attendant" means a person who provides personal care attendant services.

(19) "Personal care attendant services" means services to assist an adult with physical disabilities in performing:

(a) Activities of daily living;

(b) Instrumental activities of daily living;

(c) Routine bodily functions care (bowel and bladder);

(d) Turning;

(e) Repositioning; and

(f) If necessary, ambulation and emergency procedures.

(20) "Prescreening" means a process, using a quick checklist, which assesses whether or not an applicant appears to meet the basic requirements for eligibility.

(21) "Program coordinator" means a person who shall meet the following minimum requirements:

(a) Completion of two (2) years (fifty-four (54) semester hours) of college; or

(b) Work experience involving interviewing, community services work, administrative work, reviewing, monitoring, training or determining eligibility for human services programs shall substitute for the required college education on a year-for-year basis.

(22) [~~(21)~~] **"Service area" means those counties listed in the approved plan of the qualified agency or organization.**

(23) "Subsidy" means a financial reimbursement paid by the state through the contract agency to the participant for services provided by an attendant. The subsidy shall not be considered income for any purpose to the extent permitted by federal law and regulation.

(24) [~~(23)~~] [~~(22)~~] "Work agreement" means an agreement of time and tasks developed by the participant as the employer, for the attendant as the employee.

Section 2. Participant Responsibilities. The participant's responsibilities shall include:

(1) Recruiting attendants;
(2) Screening attendants;
(3) Interviewing attendants;
(4) Selecting attendants;
(5) Hiring attendants;
(6) Instructing attendants on specific personal care duties;
(7) Supervising attendants;
(8) Evaluating attendant care;
(9) Firing attendants;
(10) Discussing and coming to agreement with each attendant about what services shall be provided;
(11) Keeping records and reporting to the agency attendant hours [~~time~~] worked for payment to the attendant;
(12) Computing required employee payroll, withholdings, and actual payment of required withholdings and taxes appropriate to being an employer;
(13) Establishing terms of employment for attendant to include time, hours, duties, and responsibilities. This shall be in the form of a signed [~~written~~] agreement between the disabled adult and the attendant; and
(14) Coordinating with the program coordinator the aspects of program requirements.

Section 3. Attendant Responsibilities. The attendant's responsibilities shall include:
(1) Entering into written agreement for terms of work as specified by the participant.
(2) Performing the tasks agreed on between the participant and attendant.
(3) Performing the tasks as instructed by the participant.
(4) Reporting to work as scheduled.
(5) Maintaining the privacy and confidentiality of the participant.
(6) Notifying participant at least six (6) hours in advance when unable to report for work as scheduled.
(7) Maintaining a list of emergency numbers.
(8) Attending attendant training related to specific care needs.
(9) Keeping a daily record of hours worked and services rendered.
(10) Submitting to the participant, documents and material necessary to comply with the formal payment process.
(11) Meeting with participant and program coordinator for monitoring and coordinating the aspects of the program [~~regarding the participant's progress and the state of the relationship between the participant and the attendant~~].
(12) Disclosing misdemeanor or felony convictions to the participant and authorize the participant to obtain a record check on the attendant through law enforcement agencies.
(13) Notifying program coordinator of conditions which seriously threaten the health or safety of the participant or attendant.

Section 4. Program Coordinator Responsibilities. The program coordinator's responsibilities shall include:
(1) Locating severely physically disabled persons who may be eligible for participation.
(2) Prescreening applicants who may be eligible to participate in the personal care attendant program.
(3) Assisting the participant in how to conduct an interview and screen prospective attendants.
(4) [~~Assisting in the recruitment and referral of attendants to participants.~~
~~(5)~~] Assisting in or arranging for the training of attendants if necessary.
(5) [~~(6)~~] Reviewing with the participant the evaluation completed by the evaluation team.
(6) [~~(7)~~] Assisting the participant in developing a work agreement between the disabled adult and attendant.
(7) [~~(8)~~] Monitoring the aspects of the program with [~~progress of~~] each participant on a quarterly basis.
(8) [~~(9)~~] Assisting the participant in finding back-up attendants for emergencies or regular attendant's time off.
(9) [~~(10)~~] Assisting in the recruitment and referral of personal care attendants when requested.
[~~(11) Maintaining a list of qualified personal care attendants.~~]
(10) [~~(12)~~] Assuring that participants receive training in record-keeping and tax responsibilities related to services.
(11) [~~(13)~~] Completing ten (10) hours of initial care management training and [~~any~~] follow-up training required by the cabinet.

Section 5. Qualified Agency Responsibilities. The responsibilities of the qualified agency shall include:
(1) Employing or contracting with an evaluation team consisting of three (3) individuals:
(a) [~~A program coordinator or~~] Social worker;
(b) An occupational or physical therapist; and
(c) A registered nurse.
(2) Providing monthly programmatic and financial reports on attendants per participant to the contract agency.
(3) Developing procedures for payment of subsidies and establishing appropriate fiscal control procedures within the agency.
(4) Employing or contracting for the services of a program coordinator.

Section 6. Evaluation Team Responsibilities. The responsibilities of the evaluation team shall include:
(1) Completing the initial evaluation of applicants.
(2) Reevaluating participants annually or more frequently if changes occur in the participant's situation.

Section 7. Contract Agency Responsibilities. The responsibilities of the contract agency shall include:
(1) Implement the personal care attendant program according to a plan approved by the Division of Aging Services.
(2) Assume fiscal accountability for the state funds designated for the program.
(3) Provide necessary administrative support personnel within the contract agency office.
(4) Provide an appeals procedure and hearing process in compliance with the requirements of 905 KAR 8:140.
(5) Monitor management practices, including program evaluation, to assure effective and efficient program operation and compliance with financial audit requirements.
(6) Provide, in conjunction with provider agencies, a procedure for attendant payment.
(7) Review [~~all~~] recommendations of the evaluation team regarding applicant eligibility and participant services.
(8) Follow the recommendations of the evaluation team or give notice to the applicant within twenty (20) days of receipt of the recommendations and the reasons for not acting upon them.
(9) Respond in writing to the provider agency regarding the evaluation team's recommendations within ten (10) working days.
(10) Submit monthly program reports to the Division of Aging Services.
(11) Maintain files and records for cabinet audit, including participant records and statistical reports.

Section 8. Division of Aging Services Responsibilities. The responsibilities of the Division of Aging Services shall include:
(1) Provide a format for the area plan of requirements for the Personal Care Attendant Program.
(2) Review proposed plans submitted by contract agencies to administer the personal care attendant program.
(3) [~~(2)~~] Inform the contract agency in writing of the action taken regarding the proposed plan for administration of the personal care attendant program. Action taken by the Division of Aging Services

shall include the following:

(a) Approve the plan as submitted;

(b) Require the contract agency to revise the plan; or

(c) Reject the plan.

(4) [~~(3)~~] Monitor the contract agency at least annually, and the qualified agencies and participants as deemed necessary by the division.

(5) Develop and revise program and fiscal requirements.

(6) [~~(4)~~] Allocate available funding.

(7) [~~(5)~~] Advocate for program expansion.

(8) [~~(6)~~] Provide technical assistance.

Section 9. Eligibility. To be eligible for participation in the personal attendant care services program a person shall meet:

(1) The physical eligibility standard which requires that a person shall:

(a) Be eighteen (18) years old or older;

(b) Be severely physically disabled as defined by KRS 205.900(6);

(c) Need not less than fourteen (14) hours of attendant care per week or need an attendant at night;

(d) Reside, or through this program be able to reside, in a noninstitutional setting;

(e) Agree to evaluation of his eligibility for personal care services by an evaluation team from a qualified agency or organization;

(f) Be mentally capable of recruiting, hiring, firing, and supervising attendants;

(g) Agree that his need for continuing attendant care shall be subject to an initial evaluation and reevaluations at yearly intervals;

(h) Work with the program coordinator in establishing a personal care plan as the basis of agreement between the disabled person and his attendant; and

(i) Be capable of preparing attendant payroll reports and required employer tax statements.

(2) The income equity standards shall be determined by the following formula contained on a form prescribed by the cabinet:

(a) Deduct from the annual gross income the cost of unreimbursed extraordinary medical expenses and impairment related expenses, an amount adjusted to a family size of one (1) at sixty (60) percent of the median income as published in the Title XX Block Grant Plan, dependent care expenses for which a waiver has been obtained from the cabinet to obtain the adjusted gross income.

(b) From the adjusted gross income subtract a basic cost of living factor of $1,260 to obtain the adjusted gross income less the cost of living allowance.

(c) Divide the adjusted gross income less the cost of living allowance by two (2) to allow for the unique economic and social needs of the severely disabled adults.

(d) To obtain the remaining income subtract from the adjusted gross income less the basic cost of living allowance divided by two (2) a supplemental cost of living allowance which shall be calibrated annually so that a participant requiring the minimum level of service at the maximum rate for care shall become ineligible when the difference between the adjusted gross income and the remaining income equals or exceeds eighty (80) percent of the median income as published in the Title XX Block Grant Plan.

(e) If the remaining income equals the cost of care the client is ineligible.

(f) If the remaining income is more than four (4) dollars but less than the cost of care the client shall contribute to the cost of care.

Section 10. Clients' Contribution to Cost of Care. When the eligibility determination indicates the client shall contribute to the cost of care, the following shall apply:

(1) The weekly amount of the clients' contribution shall be determined by dividing the remaining income by fifty-two (52).

(2) The required contribution shall be paid to the attendant.

(3) It shall be the responsibility of the qualified agency to collect the contribution.

Section 11. Acceptance for Services. (1) A client shall be accepted for service when:

(a) It is determined that he is eligible to participate in the program; and

(b) Funds are available.

(2) When programs are at capacity, eligible clients' names shall be placed on a chronological waiting list and as vacancies occur be accepted for service on a first come basis. Clients who have been determined eligible for, receive personal care attendant services, and relocate to another personal care attendant service area shall be considered on a first-come basis and placed at the top of the waiting list for service.

(3) If several potential participants make application at the same time, an equitable procedure for selecting applicants shall be proposed by the service provider agency to be approved by the contract agency, subject to the approval of the Division of Aging Services.

Section 12. Relocation for Education or Training. (1) Clients who are eligible for and receive personal care attendant services but go to another personal care attendant service area to complete a training or educational course shall remain a client of the personal care attendant program **service area** [~~district~~] of origin when the following conditions are met:

(a) The client considers the personal care attendant program district of origin to be his place of residence; and

(b) The client's purpose for relocation is to complete a course of education or training to increase employment skills.

(2) The receiving personal care attendant program **service area** [~~district~~] shall provide courtesy monitoring to coordinate the aspects of program requirements.

(3) The personal care attendant program **service area** [~~district~~] of origin shall retain responsibility for payment of subsidies for the duration of the educational or training course and when other eligibility requirements are met.

(4) The receiving **service area** [~~district~~] shall forward copies of reports to the **service area** [~~district~~] of origin.

(5) The **service area** [~~district~~] of origin shall be responsible for payment of subsidies, monthly programmatic and financial reports.

Section 13. [~~12.~~] Application and Assessment. (1) Referrals to the personal care attendant program may be by self, family, or other persons or agencies.

(2) When prescreening information indicates interest and eligibility, the evaluation team shall visit the applicant and assist in the completion of the "application form" herein incorporated by reference.

(3) The "evaluation team report" herein incorporated by reference shall be completed and signed by all team members.

(4) The "evaluation team findings and Recommendations" herein incorporated by reference shall be completed and signed by the three (3) team members.

(5) The provider agency shall report the evaluation team's findings and recommendations to the contract agency for final review of participants.

(6) The qualified agency shall be notified in writing as to the final determination.

(7) The qualified agency shall notify the applicant or participant when the findings and recommendations of the evaluation team are accepted by the contract agency.

(8) When the recommendations of the evaluation team are not accepted by the contract agency, the contract agency shall notify the applicant or participant in writing within twenty (20) days and state the reasons for not accepting the recommendations.

Section 14. [13.] Attendant Payment. The amount of attendant payment determined shall be in compliance with the following:

(1) The maximum hourly rate for direct personal attendant care shall be established by the Division of Aging Services annually and stated in the contract. Minimum hours per week shall be fourteen (14); maximum hours per week shall be forty (40).

(2) In an extreme situation, a temporary waiver of maximum hours and cost may be granted by the contract agency.

(3) A special night rate may be negotiated when:

(a) A participant does not require an attendant during the day;

(b) A participant does not need direct personal attendant care services from this attendant;

(c) Or to provide for caregiver respite service.

(4) It shall be the responsibility of the participant who is in need of a live-in attendant to directly negotiate with potential attendants on room and board for personal care attendant services. A live-in attendant shall not be excluded from employment as a part-time attendant. Maximum payment under this arrangement shall be for forty (40) hours of personal attendant care services per week.

Section 15. [14.] Reporting and Recording. (1) An individual record for each personal care attendant program participant shall be maintained by the qualified agency and shall include:

(a) Prescreening information form;

(b) Application;

(c) Income eligibility form (updated annually);

(d) Evaluation team report;

(e) Evaluation team findings and recommendations (updated annually);

(f) Annual reassessment;

(g) Authorization for extraordinary medical expenses (if applicable);

(h) [(g)] Employee tax agreement; and

(i) [(h)] A chronological record of contacts with the participant, family, physician and others involved in care with quarterly monitoring reports.

(2) Each program coordinator shall submit to the provider agency a completed monthly activity report herein incorporated by reference by the designated date in the contract. Copies shall be forwarded to the contract agency and made available to the Division of Aging Services by the contract agency.

Section 16. [15.] Suspension of Services. Suspension of services shall occur for the following reasons:

(1) Condition improved - on reevaluation participant is determined to need less than fourteen (14) hours of care per week.

(2) Condition worsened - on reevaluation participant is determined to need more hours of care than the program can provide and to be in danger when left alone due to lack of other caregivers.

(3) Participant's behavior clearly presents a danger to the program coordinator or attendant.

(4) Participant is unwilling or unable to submit required employer taxes.

(5) Participant moves from Kentucky or to an area where funding limitations prohibit services being rendered.

(6) Participant moves into an area of Kentucky where no services are contracted, unless such relocation remains feasible for the closest qualified agency, feasibility being determined by the qualified agency.

(7) Participant expires or is admitted to a long-term care facility.

(8) Participant requests suspension of services.

Section 17. [16.] Request for Fair Hearing. The applicant or participant may request a fair hearing within thirty (30) days of any decision by the cabinet, the contract agency or qualified agency as provided by 905 KAR 8:140.

Section 18. [17.] Material Incorporated by Reference. (1) Forms necessary for the implementation of the personal care assistance program shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 1, 1993
FILED WITH LRC: February 2, 1993 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

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**, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A)**.

(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 reimbursement system includes the following specific policies, components or

principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section 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 Associa-

tion 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.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:010. Definitions for 201 KAR Chapter 30.

RELATES TO: KRS 324A.010, 324A.035, 324A.040
STATUTORY AUTHORITY: KRS **324A.035** [~~324A.010~~]
NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures, and to protect the public. **The function of this administrative regulation is to define the terms used in 201 KAR Chapter 30.**

Section 1. (1) "Board" means the Kentucky Board of Appraisers.

(2) "Certified general real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to appraise all real property in connection with federally and nonfederally related transactions.

(3) "Certified residential real property appraiser" means an appraiser who has fulfilled the requirements for certification established by the board to perform appraisals of one (1) to four (4) residential units in connection with federally and nonfederally related transactions.

(4) "Classroom hour" means fifty (50) minutes actual classroom instruction.

(5) "Federal financial institutions regulatory agencies" means the:
(a) Board of Governors of the Federal Reserve System;
(b) Federal Deposit Insurance Corporations;
(c) Office of the Comptroller of the Currency;
(d) Office of Thrift Supervision; and
(e) National Credit Union Administration.

(6) "Federally related transaction" means a real estate-related financial transaction that a federal financial institutions regulatory agency or the Resolution Trust Corporation:
(a) Engages in; or
(b) Contracts for; or
(c) Regulates; and
(d) For which it requires the services of:
1. Certified general real property appraiser;
2. Certified residential real property appraiser; or
3. Licensed real property appraiser.

(7) "Licensed real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise real property in connection with federally and nonfederally related transactions.

(8) "Licensed nonfederal real property appraiser" means an appraiser who has fulfilled the requirements for licensure established by the board to appraise nonfederally related transactions.

(9) "Real estate-related financial transaction" means any transaction that involves the:
(a) Sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
(b) Refinancing of real property, or interests in real property; and
(c) Use of real property, or interests in property, as security for a loan or investment, including mortgage-backed securities.

(10) "Residential" means one (1) to four (4) residential units.

(11) "Transitional licensed real property appraiser" means an appraiser who has fulfilled the requirements for transitional licensure established by the board to appraise real property in connection with federally and nonfederally related transactions.

DON PARIS, Chairman

APPROVED BY AGENCY: April 6, 1993
FILED WITH LRC: April 8, 1993 at 3 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:020. Licensed nonfederal real property appraiser.

RELATES TO: KRS 324A.010, 324A.035, 324A.065
STATUTORY AUTHORITY: KRS 324A.035
NECESSITY AND FUNCTION: This regulation is necessary to comply with KRS Chapter 324A. **The function of this administrative regulation is to establish the criteria for licensure as a nonfederal real property appraiser.**

Section 1. **The provisions of this administrative regulation shall not apply to persons who, prior to July 14, 1992 have engaged in the appraisal of real property for at least ten (10) years.** [~~The provisions of this administrative regulation shall not apply to persons who, prior to July 14, 1992, had performed appraisals of real property for ten (10) years.~~]

Section 2. Qualifications for Licensure. (1) An applicant shall be licensed as a nonfederal real property appraiser if he has:
(a) A:
1. High school diploma; or
2. General equivalency diploma;
(b) Applied to the board for licensure; and
(c) Paid the fees required by KRS 324A.065(2).

(2) A licensed nonfederal real property appraiser shall not be required to meet the conditions established for the:
(a) Certification of:
1. General real property appraisers; or
2. Residential real property appraisers; or
(b) Licensure of licensed real property appraisers.

Section 3. Licensed Nonfederal Real Property Appraiser: Restrictions. A licensed nonfederal real property appraiser shall not perform real property appraisals of property that is the subject of a federally related transaction as defined by Section 1(6) of 201 KAR 30:010.

Section 4. Written and Oral Communications. (1)(a) In a written or broadcast communication, a licensed nonfederal real property appraiser shall include the statement set out in paragraph (b) of this subsection.

(b) "Not licensed or certified to perform appraisals in federally-related transactions."

(2) A written or broadcast communication shall include:
(a) Appraisal reports;
(b) Advertisements; and
(c) Business cards and stationery.

(3) In a print advertisement, the statement shall be in letters at least fifty (50) percent the size of the largest letter in the advertisement.

(4) In a radio or television advertisement, the statement shall be stated clearly and understandably.

(5) In a television advertisement, the statement shall:
(a) Be written;
(b) If in letters that are all upper case, be eighteen (18) scan lines in size; and
(c) If both upper and lower case letters are used:

1. For upper case letters, be twenty four (24) scan lines in size;
2. For lower case letters, be eighteen (18) scan lines in size; and
(d) Appear on the screen at least:
1. Three (3) seconds for the first line of lettering; and
2. One (1) second for each additional line of lettering.

DON PARIS, Chairman
APPROVED BY AGENCY: April 6, 1993
FILED WITH LRC: April 8, 1993 at 3 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure.

RELATES TO: KRS 324A.010, 324A.030, 324A.035, 324A.045, 324A.065
STATUTORY AUTHORITY: KRS 324A.030, 324A.035
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to establish policies and procedures and to protect the public. **The function of this administrative regulation is to establish the: (1) types of appraisers required in federally related transactions; (2) scope of the practice; and (3) the general requirements for certification or licensure.**

Section 1. Types of Appraisers. An appraiser for a federally related transaction shall be a:
(1) Certified general real property appraiser;
(2) Certified residential real property appraiser;
(3) Licensed real property appraiser; or
(4) Transitional licensed real property appraiser.

Section 2. Scope of Practice. (1) A certified general real property appraiser may perform appraisals of all types of real property regardless of transaction complexity or value.
(2) A certified residential real property appraiser may perform residential appraisals of one (1) to four (4) units regardless of transaction complexity or value.
(3) A licensed real property appraiser and a transitional licensed real property appraiser may perform appraisals of:
(a) Noncomplex, one (1) to four (4) residential units that have a transaction value of less then $1,000,000;
(b) Complex, one (1) to (4) residential units that have a transaction value of less than $250,000; and
(c) Nonresidential real property that has a transaction value of less than $250,000.

Section 3. General Requirements for Certification or Licensure. Certification or licensure, as appropriate, of the types of appraisers specified in Section 1 of this administrative regulation, shall be granted if an applicant:
(1) Has met the examination, education, experience, and fee requirements established by the provisions of 201 KAR 30:050 and 201 KAR 30:060; and
(2) Applies to the board on the "Appraiser License/Certification Application Form".

Section 4. Incorporation by Reference. (1) "Appraiser License/Certification Application" (July, 1992) is incorporated by reference.
(2) It may be inspected, copied, or obtained at the Kentucky Board of Appraisers, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, 8 a.m. to 4:30 p.m., Monday through Friday.

DON PARIS, Chairman
APPROVED BY AGENCY: April 6, 1993
FILED WITH LRC: April 8, 1993 at 3 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:040. Standards of practice administrative regulation.

RELATES TO: KRS 324A.035, 324A.050(10)
STATUTORY AUTHORITY: KRS 324A.035
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to insure that appraisers follow standards to protect the public. **The function of this administrative regulation is to establish the standards of professional practice.**

Section 1. A licensed nonfederal real property appraiser shall be exempted from the provisions of KRS 324A.050(10), requiring compliance with the "Standards of Professional Appraisal Practice".

Section 2. A certified general real property appraiser, a certified residential real property appraiser, a licensed real property appraiser, and a transitional licensed real property appraiser shall comply with the "Uniform Standards of Professional Appraisal Practice".

Section 3. An appraisal report that is made with regard to a federally related transaction shall be in writing.

Section 4. If an applicant, certificant, or licensee fails to comply with the reporting or documentation requirements established in administrative regulations promulgated by the board, his certificate or license shall be denied or suspended by the board. **201 KAR 30:070, Section 10, provides for the administrative process dealing with denial and suspension by the board.**

Section 5. (1) "Uniform Standards of Professional Appraisal Practice (January, 1993)", Appraisal Standards Board of the Appraisal Foundation, is incorporated by reference.
(2) It may be inspected, at the Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

DON PARIS, Chairman
APPROVED BY AGENCY: April 6, 1993
FILED WITH LRC: April 8, 1993 at 3 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:050. Examination, education and experience requirement.

RELATES TO: KRS 324A.030, 324A.035, 324A.040, 324A.065
STATUTORY AUTHORITY: KRS 324A.035, 324A.040
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public. **The function of this administrative regulation is to establish the examination, education and experience requirements for certification as a certified general real property appraiser, certified residential real property appraiser, licensed**

real property appraiser, or transitional licensed real property appraiser.

Section 1. Examination. An applicant for certification as a certified general real property appraiser, certified residential real property appraiser, licensed real property appraiser, or transitional licensed real property appraiser shall pass an examination that **is specific for the certification or license applied for and** has been:

(1) Approved by the board; and

(2) Approved by the Appraiser Qualifications Board of the Appraisal Foundation.

Section 2. Required Hours of Instruction. (1) An applicant for the certified general real property appraiser examination shall have completed 165 hours of approved instruction.

(2) An applicant for the certified residential real property appraiser examination shall have completed:

(a) 105 hours of approved instruction, for certification prior to January 1, 1994; and

(b) 165 hours of approved instruction, for certification on or after January 1, 1994 if required by the **federally-established** Appraiser Qualifications Board.

(3) An applicant for the licensed real property appraiser examination shall have completed seventy-five (75) hours of approved instruction.

(4) An applicant to the board for a transitional license shall be issued a transitional license and shall meet the education requirement for licensure on or before the end of the second full year of license renewal or the transitional license shall automatically lapse.

(5)(a) Completed hours of instruction for one (1) type of appraiser may be credited to the number of hours of approved instruction required for another type of appraiser.

(b) Required hours of instruction may have been completed at any time prior to application for certification or licensure.

Section 3. Approved Instruction. Approved instruction for certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall be subjects related to real estate appraisal that:

(1) Include coverage of the "Uniform Standards of Professional Appraisal Practice" of the Appraisal Standards Board of the Appraisal Foundation; and

(2) For licensed real property appraisers and certified residential real property appraisers, place particular emphasis on the appraisal of one (1) to four (4) unit residential properties;

(3) For certified general real property appraisers, place particular emphasis on the appraisal of nonresidential properties; and

(4) Include coverage of:

(a) Influences on real estate value;

(b) Legal consideration in appraisal;

(c) Types of value;

(d) Economic principles;

(e) Real estate markets and analysis;

(f) Valuation process;

(g) Property description;

(h) Highest and best use analysis;

(i) Appraisal statistical concepts;

(j) Sales comparison approach;

(k) Site value;

(l) Cost approach; and

(m) Income approach, including:

1. Gross rent multiplier analysis;

2. Estimation of income and expenses;

3. Operating expense ratios; and

4. Direct capitalization;

(n) Valuation of partial interests;

(o) Appraisal standards and ethics; and

(p) Narrative report writing.

Section 4. Credit for Instruction. (1) Credit for instruction shall be granted if:

(a)1. It is approved by the board;

2. Complies with the provisions of this administrative regulation; and

(b) It is documented by the applicant;

(c) It is a course that requires at least fifteen (15) hours of instruction; and

(d) An applicant has passed a written examination of the subject matter of the course.

(2)(a) Credit toward the classroom hour requirement may be granted to a teacher of appraisal courses.

(b) A teacher of appraisal courses who wishes to receive credits shall:

1. File a written request with the board for receipt of credit;

2. Document the appraisal courses taught, by title, date, place taught, length of course; and

3. Elect to receive credit for either the:

a. Classroom hour requirement; or

b. Experience requirement.

(3) The board shall grant credit for courses to an applicant in which:

(a) He received credit from the course provider by challenge examination;

(b) The credit was granted by the course provider prior to July 1, 1990; and

(c) The board is satisfied with the quality of the challenge examination that was administered by the course provider.

Section 5. Approved Providers of Instruction. (1) Instruction may be obtained from approved:

(a) Colleges or universities;

(b) Community or junior colleges;

(c) Real estate appraisal or real estate related organizations;

(d) State or federal agencies or commissions

(e) Proprietary schools; or

(f) Other providers.

(2) A provider shall be approved by the board if he:

(a) Applies to the board for approval on the "Appraisal Education Provider Application Form"; and

(b) Is determined by the board to be a qualified appraisal education provider.

Section 6. Required Experience. (1)(a) Prior to certification as a general real property appraiser or a residential real property appraiser, an applicant shall have acquired two (2) calendar years appraisal experience.

(b) 1,000 hours of appraisal experience acquired within a calendar year shall constitute a calendar year appraisal experience.

(c) The two (2) calendar years appraisal experience may have been acquired in any two (2) calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(d) For certification as a general real property appraiser, fifty (50) percent of the appraisal experience shall consist of nonresidential appraisal experience.

(2) An applicant shall have acquired 2,000 hours of appraisal experience:

(a) Prior to initial licensure; or

(b) Within two (2) years of initial licensure, for transitional licenses.

(3)(a) An applicant shall verify experience credit by affidavit.

(b) The board may request documentation of appraisal experience, including reports or file memoranda.

(4) Acceptable appraisal experience shall include:

(a) Fee and staff appraisal;
(b) Ad valorem tax appraisal;
(c) Review appraisal;
(d) Appraisal analysis;
(e) Real estate counseling;
(f) Highest and best use analysis;
(g) Feasibility analysis or study; and
(h) Teaching of appraisal courses, as provided by this section.

Section 7. Continuing Education: Number of Hours Required. Certified general real property appraisers, certified residential real property appraisers, and licensed real property appraisers shall:
(1) Complete ten (10) hours of approved continuing education each license year; and
(2) Furnish the board with proof of compliance.

Section 8. Continuing Education. (1) Continuing education credit may be granted for ten (10) hours:
(a) Of approved continuing education courses; or
(b) For participation, other than as a student, in appraisal educational programs and processes.
(2) Appraisal educational programs and processes shall include:
(a) Teaching;
(b) Program development;
(c) Authorship of textbooks; or
(d) Similar activities that are determined by the board to be equivalent to obtaining continuing education.
(3) Continuing education credit shall be granted if a course:
(a) Is at least two (2) hours in duration;
(b) Subject ensures that an appraiser's skill, knowledge, and competency in real estate appraisal will be maintained or increased; and
(c) Has been approved by the board.
(4) Application for continuing education credit shall be submitted to the board in writing and documented by the approved provider of instruction.

Section 9. Material Incorporated By Reference. (1) The following material is incorporated by reference:
(a) "Appraisal Education Provider Application Form" (1992);
(b) "Uniform Standards of Professional Appraisal Practice", (January 1993), Appraisal Standards Board of the Appraisal Foundation.
(2)(a) These documents may be inspected or obtained at the Real Estate Appraisers Board, 3572 Iron Works Pike, Room 308, Lexington, KY 40511, Monday through Friday, 8 a.m. to 4:30 p.m.
(b) The "Uniform Standards of Professional Appraisal Practice", may be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave, N.W., Suite 900, Washington DC, 20005.

DON PARIS, Chairman
APPROVED BY AGENCY: April 6, 1993
FILED WITH LRC: April 8, 1993 at 3 p.m.

KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:060. Fees administrative regulation.

RELATES TO: KRS 324A.020, 324A.035, 324A.040, 324A.045, 324A.065
STATUTORY AUTHORITY: KRS 324A.040, 324A.045, 324A.065
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public. **The function of this administrative regulation is to establish the fees for initial application, annual renewal, roster, and examination, both for federally and nonfederally related transactions.**

Section 1. Fees required by KRS 324A.065(1) and (2) shall be submitted with the application or request.

Section 2. (1) The renewal date for certificates and licenses shall be July 1 of each calendar year.
(2) The fees required for annual renewal of certificates and licenses shall be submitted by certificants or licensees on or before July 1 of each calendar year.

Section 3. The roster fee shall be paid with the application or renewal fee.

Section 4. Examination fees shall be paid prior to an examination.

Section 5. Fees. (1) Federally-related transactions:
(a) Initial application fee: $200;
(b) Examination fee: $200;
(c) An annual certificate or licensure fee: $200;
(d) Duplicate certificate fee: ten (10) dollars;
(e) Certificate correction fee: ten (10) dollars;
(d) Roster fee not to exceed fifty (50) dollars.
(2) Nonfederally-related transactions:
(a) Initial application fee: $100;
(b) Examination fee: $100;
(c) An annual certificate or licensure renewal fee: $100;
(d) Duplicate certificate fee: five (5) dollars;
(e) Certificate correction fee: five (5) dollars;
(f) Roster fee: twenty-five (25) dollars.

DON PARIS, Chairman
APPROVED BY AGENCY: April 6, 1993
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KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:070. Prehearing procedure.

RELATES TO: KRS 324A.020, 324A.050
STATUTORY AUTHORITY: KRS 324A.020
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public.

Section 1. Complaints and Answers. (1)(a) A complaint against a licensee or a certificant shall be submitted on "Board of Appraisers Complaint Form".
(b) A complaint shall contain a concise statement of the facts, transaction or occurrence upon which it is based.
(c) A complaint shall be notarized.
(d) Exhibits or other documents shall be attached to the complaint.
(e) A copy of the complaint and attachments shall be served on the licensee or certificant by the board:
1. At the last known address of the licensee or certificant;
2. By certified mail, return receipt requested.
(2)(a) The licensee or certificant shall file with the board an answer to the complaint on "Board of Appraisers Answer Form".

(b) The answer shall be notarized.

(c) The answer shall be filed with the board within twenty (20) days after service of the complaint.

(d) A copy of the answer shall be served on complainant by the licensee or certificant by certified mail, return receipt requested to the address shown on the complaint.

Section 2. Motions, requests, filings, and **opposing** [~~other~~] material filed with the board shall:

(1) Be served on the **opposing** [~~other~~] party by certified mail, return receipt requested; and

(2) Contain a signed statement that service on the **opposing** [~~other~~] party has been made.

Section 3. Withdrawal of Complaint. A complaint may be withdrawn by a complainant if:

(1) A request to withdraw the complaint is received:

(a) Within twenty (20) days after the filing of the complaint; or

(b) Before an answer has been filed by the applicant or appraiser; and

(2) The board approves.

Section 4. Counsel. If a party has retained counsel:

(1) The attorney shall file an entry of appearance with the board;

(2) Notices, correspondence, and orders relating to the hearing shall be transmitted to the attorney; and

(3) Motions, requests, or filings on behalf of a party or appraiser shall be made by the attorney.

Section 5. Investigations. (1) The board shall conduct an investigation of the facts alleged in a complaint:

(a) Upon receipt of a complaint and answer;

(b) If an answer is not filed with the board, upon expiration of the period specified in Section 1 of this administrative regulation.

(2) A party shall be granted access to information resulting from an investigation that:

(a) Was conducted by the board or board personnel;

(b) Was authorized by the board or board personnel; and

(c) Is related to the subject matter of the complaint.

(3) A party shall be permitted to rebut or comment upon the information or investigation specified in subsection (1) of this section.

(4) An investigation, or information resulting from an investigation shall be disclosed to a party if it:

(a) Was the basis for action appealed by an applicant or appraiser; or

(b) Relates to the subject matter of a complaint.

Section 6. Dismissal of Complaint. The board may dismiss a complaint if it determines that the facts stated in the complaint, or facts known to the board upon investigation, fail to establish a violation of KRS Chapter 324A or the provisions of administrative regulations promulgated by the board.

Section 7. Witnesses. A party shall file a list of his witnesses:

(1) With the board;

(2) At least ten (10) days prior to the hearing.

Section 8. Subpoenas. (1) A party shall file a written request to the presiding officer at least twenty (20) days prior to a hearing if he wishes to:

(a) Subpoena a witness; or

(b) Require the production of a document.

(2) The request shall contain the:

(a) Name and address of residence and place of employment, including county, of the witness;

(b) Name of document or item, with a description sufficient to identify the document or item.

Section 9. Continuance. (1) A hearing may be continued by the presiding officer:

(a) To permit the completion of discovery or other pehearing procedures; or

(b) For other good cause.

(2) If it is necessary to continue a hearing, the presiding officer shall:

(a) Reschedule the hearing; and

(b) Notify the parties.

(3)(a) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the presiding officer at least thirty (30) working days before the hearing.

(b) If a hearing relates to a complaint, a copy of the motion for continuance shall be mailed to the complainant.

(4) A motion for continuance may be filed upon the occurrence of an emergency.

(5) The presiding officer shall notify a party of his decision in writing.

Section 10. Prehearing Conference. (1) The presiding officer may schedule a prehearing conference:

(a) On his own motion; or

(b) Upon motion of a party.

(2) The presiding officer shall schedule a prehearing conference if he determines that it will:

(a)1. Establish stipulations;

2. Clarify issues;

3. Identify witnesses;

4. Resolve issues relating to:

a. Evidence;

b. Subpoenas;

c. Discovery; or

d. Protective orders; and

(b) Otherwise promote the orderly and prompt conduct of the hearing; or

(c) Promote settlement of the issues raised by a complaint or board action.

(3) If the prehearing officer schedules a prehearing conference, he shall notify the parties in writing:

(a) Of the date, time and place of the prehearing conference; and

(b) That they are required to attend the prehearing conference.

(4)(a) The presiding officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.

(b) A copy of the prehearing order shall be mailed to the parties.

Section 11. Notice of Hearing. (1) The chairman of the board shall schedule a hearing.

(2) He shall notify the parties in writing of the date, time and place of the hearing.

(3) The notice shall contain:

(a) A copy of the prehearing order, if a prehearing conference had been held; and

(b) A concise statement of the issues.

(4) The notice shall provide that the hearing shall be held forty-five (45) working days from the date of the notice.

Section 12. Discovery. (1) A request to obtain discovery shall be filed with the presiding officer.

(2) The request shall:

(a) Specify the type of discovery requested;

(b) Where applicable, describe in sufficient detail:

1. Names and addresses of persons or items;

2. Documents, other items, or places; and

(c) State the reason discovery is requested.

(3) The presiding officer may deny, limit, or require discovery.

(4) Discovery may be obtained by:

(a) Written or oral depositions;

(b) Interrogatories;
(c) Production or inspection of documents or things;
(d) Permission to photograph, or enter upon land or other property; or
(e) Physical or mental examinations.

Section 13. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to a complaint.
(2) A settlement agreement:
(a) Shall be subject to approval by the board; and
(b) If approved by the board, shall constitute:
1. A waiver of a party's right to an administrative hearing; and
2. The final order of the board.
(3) The board may order that a proposed settlement agreement be amended.

Section 14. Motions. A motion shall be:
(1) In writing;
(2) Signed; and
(3) Filed with the board and the hearing officer.

Section 15. Material Incorporated by Reference. (1) The following forms are incorporated by reference:
(a) "Board of Appraisers Complaint Form (Jan 93)";
(b) "Board of Appraisers Answer Form (Jan 93)";
(c) "Board of Appraisers Subpoena Form (Jan 93)";
(2) These forms may be inspected, copied, or obtained at the Kentucky Real Estate Appraisers Board, 3572 Iron Works Pike, Lexington, Ky, 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

DON PARIS, Chairman
APPROVED BY AGENCY: April 6, 1993
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KENTUCKY REAL ESTATE APPRAISERS BOARD
(Amended After Hearing)

201 KAR 30:080. Hearings.

RELATES TO: KRS 324A.020, 324A.035
STATUTORY AUTHORITY: KRS 324A.020
NECESSITY AND FUNCTION: This regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC 3331 through 12 USC 3351), KRS Chapter 324A to set policies and procedures and to protect the public. **The function of this administrative regulation is to establish prehearing procedures.**

Section 1. A party may:
(1) Represent himself; or
(2) Be represented by:
(a) An authorized representative; or
(b) Counsel.

Section 2. Presiding Officer. (1) The presiding officer shall be:
(a) The chairman of the board; or
(b) A person designated by the chairman to serve as the presiding officer.
(2) The presiding officer may:
(a) Issue subpoenas;
(b) Take depositions;
(c) Require production of documents;
(d) Administer oaths;
(e) Examine witnesses;
(f) Render decisions on motions, requests, or other matters, that do not result in a final disposition of the complaint;
(g) Receive evidence; and
(h) Take other action required in the conduct of hearings.

Section 3. (1) A presiding officer shall be disqualified:
(a) If it is established that he is biased or prejudiced; or
(b) For conflict of interest; or
(c) For violation of the provisions of statutes or administrative regulations governing board hearings; or
(d) For other cause for which a judge may be disqualified.
(2)(a) A party may file a written motion to disqualify a presiding officer upon the latter of:
1. Receipt of notice of the identity of the presiding officer; or
2. Discovery of facts establishing grounds for disqualification of the presiding officer.
(b) The motion shall state the facts or reasons supporting it.
(c) The board shall state in writing the facts or reasons for its decision on the motion to disqualify.

Section 4. Evidence. (1) Formal rules of evidence shall not apply.
(2) The presiding officer shall exclude evidence that is:
(a) Irrelevant;
(b) Immaterial;
(c) Unduly repetitious; or
(d) Excludable on:
1. Constitutional or statutory grounds; or
2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.
(3) Testimony or other evidence shall be admitted if it is:
(a) Based on facts; and
(b) Commonly relied upon by reasonably prudent persons.
(4)(a) Evidence shall not be excluded solely because it is hearsay.
(b) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing **other** relevant evidence.
(5) The presiding officer may admit party or witness testimony taken by deposition if:
(a) A party or witness is unable to attend through no fault of his own; and
(b) The opposing party has had a full opportunity to cross-examine the party or witness.
(6) Evidence may be received in written form if it will:
(a) Expedite the hearing; and
(b) Not substantially prejudice the interest of a party.
(7)(a) A copy or an excerpt of documentary evidence may be received.
(b) Upon request, a party shall be permitted to compare the copy or excerpt with the original.
(8) Official notice shall be taken of:
(a) A fact that would be judicially noticed in the courts of the Commonwealth;
(b) The record of other proceedings before the board;
(c) Technical or scientific matters within the specialized knowledge of the board;
(d) Codes or standards that have been adopted by:
1. An agency of the United States, the Commonwealth, or another state; or
2. A nationally recognized organization or association that has been incorporated by reference as provided by KRS Chapter 13A.

Section 5. Ex parte Communications. (1) Except as provided in this section, a member of the board, a presiding officer, a party, or a person with a direct or indirect interest in the outcome of a pending hearing, shall not communicate, directly or indirectly, with regard to an issue of a pending hearing with a:
(a) Party;
(b) Person who has a direct or indirect interest in the outcome of the hearing;

(c) Person who presided at a previous stage of the hearing.

(2) Communications prohibited by the provisions of this section may be made if:

(a) Written notice is given to other parties; and

(b) Other parties are permitted to participate in the communication.

(3) A presiding officer may communicate with staff assistants, or other board personnel, if they:

(a) Have not received ex parte communications that are prohibited **from** [to] the presiding officer; and

(b) Do not furnish, augment, diminish, or modify the evidence in the record.

(4) If, prior to serving as the presiding officer of a hearing, the presiding officer has received an ex parte communication that he is prohibited from receiving as a presiding officer, he shall:

(a) Place on the record of the pending hearing:

1. Written communications received;

2. Written responses to them;

3. A memorandum stating oral communications and responses; and

4. The identity of the person from whom a communication was received; and

(b) Notify and transmit copies of the items specified in paragraph (a)1 of this subsection to the parties to the hearing.

(5) Within ten (10) days of receipt of the presiding officer's notice and transmittal, a party may:

(a) Rebut the prohibited communications specified in this section; or

(b) File a motion with the board to:

1. Disqualify the presiding officer; and

2. Seal the portions of the record pertaining to the prohibited communications.

(6) The board shall:

(a) Report any willful violation of this section to the appropriate authorities for disciplinary proceedings; and

(b) Take disciplinary action authorized by statute or administrative regulation of the board.

Section 6. Separation of Functions. (1) A person shall not serve as a presiding office of a hearing, or assist or advise a presiding officer in a hearing, if he has served as an investigator, prosecutor, or advocate with regard to the subject matter of the hearing.

(2) The provisions of subsection (1) of this section shall apply to a person who is subject to the authority, direction, or discretion of persons specified in subsection (1) of this section.

(3) A person who has participated in a determination of probable cause, or in another equivalent preliminary determination related to complainant or board action that gave rise to a hearing, shall not serve as the presiding officer of the hearing.

Section 7. Procedure at Hearing. (1) A hearing shall proceed as follows:

(a) Opening statements by:

1. Board or its counsel;

2. Complainant; and

3. Respondent.

(b) Complainant's presentation of:

1. Testimony of complainant or witnesses; and

2. Evidence.

(c) Board presentation of:

1. Witnesses; and

2. Evidence.

(d) Respondent's presentation of:

1. Witnesses; and

2. Evidence.

(e) Closing arguments.

(f) The presiding officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.

Section 8. Posthearing Procedure. (1) If the hearing has not been conducted by the board the presiding officer shall prepare and submit to the board:

(a) Findings of fact and conclusions of law;

(b) A recommended order; and

(c) Submit a transcript of the hearing to the board.

(2) A copy of the findings of fact, conclusions of law and recommended order, or decision if the board has conducted the hearing, shall be mailed to all parties of record.

(3)(a) A party may file exceptions to the presiding officer's findings of fact, conclusions of law and recommended order within fifteen (15) days of their submission to the board.

(b) If the hearing was conducted by the board, a party shall file exceptions with the board.

(4) The board may:

(a) Adopt the findings of fact, conclusions of law, and recommended order of the hearing officer; or

(b) Prepare its own findings of fact, conclusions of law and order; or

(c) Remand for further action by the hearing officer; or

(d) Take any action it deems necessary to resolve the issues raised by the hearing.

(5) The decision of the board shall:

(a) Be in writing; and

(b) Contain a statement of its:

1. Findings of fact; and

2. Conclusions of law.

DON PARIS, Chairman

APPROVED BY AGENCY: April 6, 1993

FILED WITH LRC: April 8, 1993 at 3 p.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

902 KAR 20:291. Alzheimer's nursing homes.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.071, 216B.105

NECESSITY AND FUNCTION: The administrative regulation establishing standards for freestanding facilities limited to the care of patients with Alzheimer's or related disorders, 902 KAR 20:290, was found deficient by the Administrative Regulation Review Subcommittee at its August 6, 1991, meeting. The finding of deficiency resulted from the staff/patient ratio specified in Section 3(10)(c)2 ("Staffing requirements"). Legislation to establish the staff/patient ratio in KRS Chapter 216B was not enacted during the 1992 regular session of the General Assembly. Therefore, pursuant to KRS 13A.333(1), 902 KAR 20:290 expired. KRS 216B.042 requires the cabinet to establish standards for health facilities and health services, and authorizes it to promulgate administrative regulations. Without an administrative regulation establishing standards for freestanding facilities for patients suffering from Alzheimer's or related disorders, the cabinet would be in violation of the legislative mandate expressed in KRS 216B.042. KRS 13A.333(6) prohibits an administrative body from promulgating an administrative regulation that is identical to or substantially the same as an administrative regulation that has expired. This administrative regulation is not identical to or substantially the same as 902 KAR 20:290, because: (1) Only the section relating to the staff/patient ratio was found deficient; (2) this administrative regulation does not establish or require a staff/patient ratio; and (3) it is required, by legislative mandate, by KRS 216B.042.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Facility" means a nursing home facility constructed pursuant to KRS 216B.071.

(4) "License" means an authorization issued by the Cabinet for Human Resources for the purpose of operating a nursing home and offering nursing home services.

(5) "PRN medications" means medications administered as needed.

(6) "Qualified dietician" or "nutritionist" means a person certified pursuant to KRS 310.010 or 310.030.

(7) "Patient" means any resident admitted to an Alzheimer's facility.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope. (1) Facilities constructed and operated pursuant to KRS 216B.071 and this regulation shall provide care to residents with a primary diagnosis of Alzheimer's disease or related disorder.

(2) Facilities constructed pursuant to KRS 216B.071 shall be constructed in accordance with 902 KAR 20:046 and this regulation.

(3) These facilities shall be subject to the provisions of KRS 216.535 to 216.593.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of allegations of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 620.

(c) Use of restraints. The facility shall have a written policy that addresses minimizing the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a primary diagnosis of Alzheimer's disease or related disorder. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term care facility, if done within seven (7) days prior to admission.

(c) Upon admission the patient and a responsible member of his family or legal respresentative shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When a patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of life threatening emergency), shall be transferred promptly to an appropriate facility to meet the patient's needs, or services shall be contracted for from another community resource.

(c) If changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to a setting which provides appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted at least thirty (30) days in advance of the transfer or discharge of any patient.

(e) If the patient is transferred, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be

tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long-term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include an employment application and a record of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and Social Security Number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. Responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Although emergency scheduling may require substitution of staff, every effort should be made to provide residents with familiar staff members in order to minimize resident confusion.

5. Volunteers shall not be counted to make up minimum staffing requirements.

6. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who is a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job description for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nursing assistants, and certified medication aides are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

7. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and staff assignments, and whenever possible accompanying physicians when visiting patients.

8. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during the nurse's tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

9. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

10. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in clause a. of this subparagraph may be assigned duties appropriate to their training and experience.

11. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

12. The facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services;

c. Developing and implementing the activities program and therapeutic recreation; and

d. Developing and implementing staff training program.

13. Community family support coordinator. A social worker licensed pursuant to KRS 335.090 or who has two (2) years of social work supervised experience in a health care setting working directly with individuals; or similar professional qualifications shall be utilized whose functions shall include:

a. Evaluation of resident's initial social history on admission;

b. Utilization of community resources;

c. Conducting quarterly family support group meetings; and

d. Identification and utilization of existing Alzheimer's network.

14. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infection can no longer be transmitted.

(e) Orientation and in-service training. All staff members and consultants shall have documented training in the care and handling of Alzheimer's patients, including at least:

1. Eight (8) hours of orientation to cover the following:

a. Facility Alzheimer's policies;
b. Etiology and treatment of dementias;
c. Stages of Alzheimer's disease;
d. Behavior management; and
e. Communication.
f. Resident's rights.

2. Quarterly continuing education is required, six (6) hours of which shall be in Alzheimer's disease or related disorders.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and Social Security Number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or long-term care facility if done within seven (7) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication, dosage, administration method, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the 60th day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at medically appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call and shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses or licensed practical nurses, aides, assistants, and certified medication aides. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

4. Shall be treated with kindness and respect;

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities or more often if necessary;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self-care, transfer and ambulation activities;

d. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapists.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Comprehensive assessment of resident needs. Nursing personnel shall make a comprehensive assessment of a resident's needs which describes the resident's capability to perform daily life functions and significant impairments in functional capacity:

1. The comprehensive assessment must include at least the following information:

a. Medically defines conditions and prior medical history;
b. Medical status measurement;
c. Functional status;
d. Sensory and physical impairment;
e. Nutritional status and requirements;
f. Special treatments or procedures;
g. Psychosocial status;
h. Dental condition;
i. Activities potential;

j. Cognitive status; and

k. Drug therapy.

2. Assessments must be conducted no later than fourteen (14) days after the date of admission and promptly after a significant change in the resident's physical or mental condition.

3. Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(3) Comprehensive assessments and care plans.

(a) Comprehensive assessments.

1. The facility shall make a comprehensive assessment of a resident's needs, which describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

2. The comprehensive assessment shall include at least the following information:

a. Medically defined conditions and prior medical history;

b. Medical status measurement;

c. Functional status;

d. Sensory and physical impairments;

e. Nutritional status and requirements;

f. Special treatments or procedures;

g. Psychosocial status;

h. Discharge potential;

i. Dental condition;

j. Activities potential;

k. Rehabilitation potential;

l. Cognitive status; and

m. Drug therapy.

3. Frequency. Assessments shall be conducted:

a. No later than fourteen (14) days after the date of admission;

b. Promptly after a significant change in the resident's physical or mental condition; and

c. In no case less often than once every twelve (12) months.

4. Review of assessments. The nursing facility shall examine each resident no less than once every three (3) months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

5. Use. The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under paragraph (4) of this section.

(b) Accuracy of assessments.

1. Coordination. Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment with the appropriate participation of health professionals.

2. Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

(c) Comprehensive care plans.

1. The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that are identified in the comprehensive assessment.

2. A comprehensive care plan shall be:

a. Developed within seven (7) days after completion of the comprehensive assessment;

b. Prepared by an interdisciplinary team, that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and

c. Periodically reviewed and revised by a team of qualified persons after each assessment.

3. The services provided or arranged by the facility shall:

a. Meet professional standards of quality; and

b. Be provided by qualified persons in accordance with each resident's written plan of care.

(d) Discharge summary. When the facility anticipates discharge, a resident shall have a discharge summary that includes:

1. A recapitulation of the resident's stay;

2. A final summary of the resident's status to include items in subsection (2)**(d)** **[~~(b)~~]** of this subsection, at the time of the discharge that shall be available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

3. A postdischarge plan of care that developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(4) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services. These services may be contracted for from another community resource.

(b) If therapy services are provided they shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services;

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests.

b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.

c. Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

d. Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, handrails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(5) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(6) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall administer the department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of

medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within fourteen (14) days. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314) or by personnel who have completed a state approved training program, from a state-approved source. The administration of oral and topical medicines by certified medicine aides shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff, (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV, and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21; or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

5. Use of restraints. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician. There shall be no PRN orders for restraints. Understanding that measures to prevent wandering may infringe on patient rights, care shall be exercised in the use of physical or mechanical devices or chemical restraints.

a. Restraints shall not be used as punishment, as discipline, as a convenience for the staff, or when not required to treat the resident's medical symptoms, or as a substitute for staff.

b. Physical or mechanical restraints that require lock and key shall not be used. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. During the patient's normal waking hours, the patient must be excercised during release periods. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be comfortable and easily removed in case of an emergency.

c. The specific purpose and time-limited order for any restraint shall be written and reviewed according to facility policy. The frequency of such renewal shall not exceed sixty (60) days.

6. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Center for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. Sharp wastes.

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

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

(iii) The containers for sharp wastes shall either be incinerated on- or off-site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

(v) Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 5:055.

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rebella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(7) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(8) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: Patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(9) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Subject to the requirements of KRS 216B.071, where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(10) Patient activities. Activities suited to the needs and interests of patients shall be provided. Provision shall be made for activities which must be appropriate for the needs and interests of each resident, taking into consideration his or her specific impairment, state of disease. Activities programs shall be available to all residents and shall be planned and documented in the patient's interdisciplinary comprehensive assessment.

(a) The activity leader shall have specialized educational preparation concerning the care of an Alzheimer's patient, and use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patient's request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients.

Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(11) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(12) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service, with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the approriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as over-bed tables Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

4. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

5. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

6. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

7. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience

discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

Section 5. Alzheimer's Facility Requirements. (1) The care of residents with Alzheimer's disease and other cognitive disorders require increased security and visual access. Measures to protect the residents from harm and to prevent them from leaving designated areas without supervision shall include frequent in-person observation of each resident and may also include the use of wide angle mirrors closed-circuit television monitors, and alarm systems.

(2) In addition to the required facility specifications in 902 KAR 20:046, the following shall be provided:

(a) Control doors, if used for security of the residents, shall be forty-four (44) inches in width each leaf, and swing in opposite directions. A latch or other fastening device on a door shall be provided with a knob, handle, panic bar, or other simple type of releasing device, the method of operation of which is obvious, even in darkness.

(b) Locking devices may be used on the control doors if the following criteria are met.

1. The locking device, which shall not be a keylock device, shall be electronic and shall be released when the following occurs:

a. Upon activation of the fire alarm or sprinkler systems;

b. Power failure to the facility; and

c. By pressing a button located at the main staff station and at the monitoring station.

2. Key pad or buttons may be located at the control doors for routine use by staff or service.

(3) Access to outdoor areas shall be provided and such areas shall be enclosed by walls or fencing that do not present a hazard.

(4) Any security measures taken to provide for the safety of wandering patients shall be as unobtrusive as possible.

WILLIAM M. GARDNER, Inspector General
FONTAIN BANKS, JR., Secretary
APPROVED BY AGENCY: April 6, 1993
FILED WITH LRC: April 7, 1993 at 9 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, APRIL 15, 1993

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Proposed Amendment)

11 KAR 3:100 Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), (15), 164.753(2), 20 USC 1095-1

STATUTORY AUTHORITY: KRS 164.748(4), (15), 164.753(2), 20 USC 1095-1

NECESSITY AND FUNCTION: Pursuant to KRS 164.744(1) and 164.748(2) the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with Title IV, Part B of the federal act. KRS 164.748(10) empowers the authority to collect from borrowers loans on which the authority has met its guarantee obligation. Section 605 of PL 102-164 (20 USC 1095-1) permits a student loan guarantee agency to garnish the wages of a borrower to recover on a loan guaranteed pursuant to Title IV, Part B of the federal act, notwithstanding any provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. This administrative regulation is necessary to establish the procedures for implementing such wage garnishment in accordance with requirements of the federal act. This amendment is necessary to simplify and clarify aspects of the hearing procedure and eliminate definitions that now appear in 11 KAR 3:001.

Section 1. Definitions. "Debtor" shall mean the borrower or any endorser obligated to repay an insured student loan, repayment of which has been guaranteed by the authority to the lender. [~~(1) The definition of "authority" is governed by KRS 164.740.~~

~~(2) "Borrower" shall mean the individual obligated to repay an insured student loan, repayment of which has been guaranteed by the authority to the lender.~~

~~(3) "Default" shall mean the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note or applicable regulations under circumstances where the lender or the authority finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for at least 180 days, for a loan repayable in monthly installments, or 240 days, for a loan repayable in less frequent installments.~~

~~(4) The definition of "disposable earnings" is governed by Section 488A(d) of the federal act.~~

~~(5) The definition of "federal act" is governed by KRS 164.740(9).~~

~~(6) The definition of "insured student loan" is governed by KRS 164.740.~~

~~(7) The definition of "participating lender" is governed by KRS 164.740(16).~~]

Section 2. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, [~~borrower's earnings~~] which order conforms to the requirements of this section.

(2) No order for withholding of disposable pay [~~earnings~~] shall be issued under this section nor become effective less than thirty (30) days after the authority provides to the debtor [~~borrower~~] by personal service or certified mail, return receipt requested, a written notice. The notice shall include at least the following information:

(a) The name and address of the debtor [~~borrower~~];

(b) The amount of the debt determined by the authority to be due;

(c) Information sufficient to identify the basis for the debt;

(d) A statement of the intention of the authority to issue and order for withholding of disposable pay [~~earnings~~] and that the debtor's [~~borrower's~~] earnings and property are subject to both administrative and judicial enforcement;

(e) A statement of the [~~borrower's~~] right[~~s~~] to dispute the existence or amount of the debt or the terms of any prior repayment schedule (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the [~~borrower's~~] right[~~s~~] to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's [~~borrower's~~] failure to timely request a hearing, the debtor's [~~borrower's~~] acquiescence to the withholding of disposable pay [~~earnings~~] will be presumed; and

(i) A statement that if the debtor [~~borrower~~] requests a hearing, but[~~,~~] fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay [~~earnings~~].

(3) Notwithstanding Section 2 [~~1~~](1) of this administrative regulation, no amount shall be withheld from the disposable pay [~~earnings~~] of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

Section 3. (1) A hearing shall be provided if the debtor [~~borrower~~], on or before the 15th day following the date of service [~~mailing~~] (as evidenced by the affidavit of an individual executing personal service or the date of the postal receipt for the notice) of the notice described in Section 2 of this administrative regulation, files with the authority a written request for such hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt [~~the postmark date~~]) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing. If the debtor [~~borrower~~] requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing. A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the head of the authority, except that nothing contained in this sentence shall preclude the appointment of an administrative law judge), shall conduct dispute hearings in Franklin County [~~or, upon motion to the hearing officer and determination of undue burden upon the borrower, the county of residence or place of employment of the borrower,~~] or any other location agreed by the parties. In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic [~~The~~] hearing shall be mechanically, electronically or stenographically recorded.

(2) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing [~~delivered to the borrower and the authority~~] no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's [~~borrower's~~] liability, if any, for repayment of the debt.

(3) Following the issuance of the hearing officer's decision, the

debtor [~~borrower~~] or the authority may petition the authority board to review the decision [~~may file an appeal in Franklin Circuit Court,~~] in accordance with 11 KAR 4:030 [~~the Kentucky Rules of Civil Procedure~~], which shall decide the dispute upon the hearing record. Where the debtor's [~~borrower's~~] liability is established by the hearing officer's decision, [~~absent a showing of indigency by the borrower,~~] an administrative order for withholding of disposable pay [~~earnings~~] may be issued forthwith by the authority, which shall, if the debtor's [~~borrower's~~] appeal is successful, return to the debtor [~~borrower~~] any money received pursuant to the withholding order.

(4) The remedies provided in this section shall not preclude the use of other judicial or administrative remedies available to the authority under the laws of the Commonwealth or federal laws and nothing contained in this section shall be construed to stay the use of other remedies.

Section 4. Hearing Procedure. (1) The debtor [~~borrower~~] shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and [~~to~~] make both opening and closing statements.

(2)(a) Not less than ten (10) days prior to the scheduled in-person or telephonic hearing, the parties shall exchange and submit to the hearing officer a list of the names, addresses, and phone numbers of any witnesses expected to testify at the hearing and a brief summary of the testimony of each witness [~~copies of any documents~~] expected to be introduced into evidence.

(b) Not more [~~less~~] than ten (10) days after the date of filing the request for a hearing or a review of written material [~~prior to the scheduled hearing~~], the debtor [~~borrower~~] shall submit to the counsel for the authority and the hearing officer, a written statement [~~of response~~] specifically stating the basis of dispute and a legible copy of any documentation that the debtor [~~borrower~~] intends to offer as evidence. Additional time for compliance with this requirement may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in Section 3(2) of this administrative regulation. If the debtor requests a hearing, but the debtor's written statement and supporting documentation considered from a viewpoint most favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing.

(c) [~~at the hearing, and~~] Facts recited in the authority's notice pursuant to Section 2(2) of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d) Noncompliance with the [~~this~~] requirements of this subsection, including failure of the authority to timely appoint a hearing officer or respond to a request for inspection of records in a timely manner sufficient to permit the debtor or hearing officer to timely perform his obligations shall be sufficient grounds for entry of an appropriate order by the hearing officer, including, but not limited to, postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay.

(3) Order of proceeding. The hearing officer shall convene an in-person or telephonic [~~the~~] hearing, identify the parties to the action and the persons participating [~~present~~], admit into evidence the notice described in Section 2(2) of this administrative regulation and the debtor's [~~borrower's~~] response described in subsection (2) of this section, solicit from the parties and dispose of any objections or motions, accept into evidence any documentary evidence not objected to, solicit opening statements, and proceed with the taking of proof. The taking of proof shall commence first by the debtor [~~borrower~~] and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth. However, statutes or judicial rules otherwise pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section, and the hearing officer may receive any evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision. Copies of documents shall be admissible, and shall require only the minimal authentication necessary to establish a reasonable presumption of their genuineness and accuracy or may be admitted without objection. The hearing officer may exclude any evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious. At the discretion of the hearing officer, the parties may be allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

Section 5. (1) An administrative order issued by the authority to withhold disposable pay [~~earnings~~] shall be served upon the debtor's [~~borrower's~~] employer personally or by certified mail, return receipt requested. A notice of the issuance [~~copy~~] of the order shall be provided to the debtor by regular first class mail [~~borrower~~]. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor [~~borrower's~~] disposable pay [~~earnings~~], except that a greater percentage may be deducted upon the written consent of the debtor [~~borrower~~].

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs, including, but not limited to, the cost of conducting a hearing or review of written material requested by the borrower, that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for any lawfully due amount which the employer fails to withhold from disposable pay [~~earnings~~] due the debtor [~~borrower~~] following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) No withholding under this section shall be grounds for discharge from employment, refusal to employ or disciplinary action against any employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 6. (1) Whenever this administrative regulation requires delivery of a notice or other communication by personal service, said service may be made by any officer authorized under KRS 454.140 to serve process or by any person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor [~~borrower~~] shall be rebuttably presumed if the person to be served or any other adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of

delivery to the person so refusing.

(3) In the case of an administrative order to withhold disposable pay [~~earnings~~] served upon an employer, receipt shall be rebuttably presumed if the person to whom the order is directed signs or refuses to sign a receipt or if his employee or agent with apparent authority signs or refuses to sign a receipt.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: March 24, 1993

FILED WITH LRC: April 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, May 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The exact number of student loan borrowers that will ultimately be affected by this proposed amendment cannot be determined because it depends on unforeseen factors of how many borrowers will default and of those who default how many will be employed and not voluntarily repay their loans. However, by example, as of April 1, 1993, over 1400 notices of intent to issue administrative orders of wage garnishment had been sent to borrowers with outstanding loans in default. Of those 1400 defaulters 30 had requested administrative hearings under this administrative regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed amendment deletes definitions that have now been promulgated in 11 KAR 3:001. No cost or savings is associated with this revision. The proposed amendment also refines certain procedures involved in providing a hearing. The costs associated with these changes would be the varying costs for a borrower to attend a hearing in Frankfort, Kentucky unless the borrower chooses to request a telephonic hearing or requests that a hearing officer merely review written documentation.

2. Continuing costs or savings: See #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The potential cost imposed upon all borrowers subject to this administrative regulation is the withholding of 10% of the disposable pay of each borrower. The administrative regulation requires an employer (as in the case of a judicial garnishment or wage assignment for child support) to engage in the administrative effort to withhold wages and submit them to KHEAA (as creditor) with a statement reflecting gross and disposable earnings. These costs are not changed by the proposed amendment.

(b) Reporting and paperwork requirements: The administrative regulation requires a borrower in default on a student loan who is subjected to this process to request a hearing in writing and subsequently submit a statement of his/her dispute and supporting documentation. If a wage withholding order is issued, the administrative regulation requires the employer (as is the case with a judicial garnishment) to report the gross and disposable earnings of the debtor when submitting to KHEAA the amount withheld pursuant to the order. There is no change in the paperwork or reporting requirements for employers. The proposed amendment changes the requirement on the borrower to the extent that the borrower must submit written documentation within 10 days of requesting the hearing rather than 10 days prior to the hearing date.

(2) Effects on the promulgating administrative body: The overall effect of using the process established by this administrative regulation would be to speed the recovery of defaulted loans prior to resorting to litigation through judicial process, thereby avoiding additional pressure on a heavily burdened court system. Additionally, the process potentially will enhance the in-house collection of loans where the borrower resides out-of-state and reduce the need for contracted services. Specifically, the proposed amendment, insofar as it refines the hearing process, will permit the agency to better prepare for a hearing by requiring earlier submission of written materials by borrowers; avoid a hearing where no genuine dispute exists, and avoid travel to other states to conduct a local hearing by substituting a telephonic hearing or review of written documentation for a distant, in-person hearing.

(a) Direct and indirect costs or savings:

1. First year: The savings cannot be precisely determined because the savings depend on the number of loans likely to default and variables such as the number of hearings requested and the extent to which defaulted loans are fully recovered through this process without resort to litigation. Savings may be somewhat offset by an undetermined amount necessary to conduct administrative hearings. In any event, costs are recoverable from the defaulter under the terms of the promissory notes.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: There are several factors that contribute to a decrease in costs for the agency. First, a faster recovery of loans through this process will permit earlier retention of the agency's 30% share of collections and consequent reinvestment of funds, and quicker retention will avoid extended operating expenses associated with continued collection activity and rigid federal requirements. Second, the process will enhance in-house recovery of defaults from borrowers and reduce the need for contracted services in distant locations for conducting local hearings.

(b) Reporting and paperwork requirements: There is no significant change in the paperwork or reporting requirements imposed on the agency.

(3) Assessment of anticipated effect on state and local revenues: The process established by this regulation will permit expedited recovery of defaulted loans and retention by the agency of 30% of collections. This amount represents federally restricted funds used to pay operating expenses of the loan insurance program.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The agency uses a full range of collection tools to recover defaulted loans, including telephone collection, tax refund setoff, litigation, and referral of accounts to contracted collection agencies. The process established by this regulation is another tool authorized by federal law, and its use is consistent with the agency's policy of using every means available to recover defaulted loans. The primary change affected by the proposed amendment is refinement in the hearing process. The alternative to providing telephonic hearings or review of written documentation would be the costly process of conducting hearings in distant locations or requiring all borrowers to travel to Frankfort for a hearing. The former alternative is unduly burdensome and costly to the agency. The latter alternative is constitutionally suspect as a matter of "due process" and "equal protection".

(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: The process for providing hearings under the proposed amendment substantially conforms to the process prescribed by the federal government for providing hearings regarding the administrative setoff of federal tax refunds.

Tiering: Was tiering applied? Yes. The regulation affords equal, uniform notice and due process safeguards of administrative hearings. The proposed amendment contains flexibility by permitting substitutes for in-person hearings in Frankfort at the borrower's option rather than on a showing of undue burden by the borrower.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. Section 488A of the Higher Education Act of 1965 (20 USC 1095-1) as added by §605 of PL 102-164 (Nov. 15, 1991).

2. State in sufficient detail the state compliance standards: This regulation provides for issuance of a notice by the agency, to a defaulting debtor, delineating the rights of the debtor (including the right to inspect records, make voluntary payments, or request a hearing to dispute the debt. The regulation sets forth the time frame and procedure for conducting an evidentiary hearing, if one is requested. Finally, the regulation prescribes the process for issuance of an administrative order for withholding of 10% of a debtor's disposable earnings.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute requires a minimum of 30 days prior notice to a defaulting debtor, and requires the agency to afford the opportunity to inspect records, make voluntary payments, and request a hearing to dispute the debt. The federal statute limits the individuals and amount of wages that may be subjected to withholding under this process, and precludes a full-time employee of the agency from conducting the evidentiary hearing.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This regulation does not impose stricter, additional or different requirements than the federal mandate.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: N/A

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 6:010. KHEAA [~~Commonwealth~~] Work Study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(6)
STATUTORY AUTHORITY: KRS 13A.100, 13A.110, 164.748(4)
NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority ("authority") is empowered to administer student financial assistance programs in the form of work-study. The purpose of this administrative regulation is to name the authority's program, and set forth the procedures under which it will be administered. The purpose of this amendment is to allow participating institutions to be eligible employers. [~~replace requirements formerly contained in the Commonwealth Work Study Program Manual of Procedures and Guidelines with specific regulatory requirements and rename the program.~~]

Section 1. Definitions. (1) "Alternate work plan" means a work-study arrangement in which a participating student alternates a school term with a work term. For example, a participating student attends school full time one (1) term, works full time the next term, and returns to school full time the following term. Participating students employed during the summer who are not enrolled at least half time during that term shall be considered alternate for the summer term. Any academic credits earned as a direct result of the KWSP employment shall not be considered in the determination of alternate status.

(2) "Career-related work experience" means a job which has a correlation with the participating student's career direction determined by the participating institution and evidenced by the student's major course of study.

(3) "Cost of education" means those expenses commonly related to obtaining an education at the participating institution plus those costs directly related to the participating student's KWSP work experience, including any required dues and travel (at the rate of twenty-two (22) cents per mile) from the school to the place of employment or, under an alternate work plan, from the student's residence to the place of employment.

(4) "Eligible program of study" means a program not leading to a certificate, diploma, or degree in theology, divinity, or religious education.

(5) "Financial need" means the total cost of education less financial assistance received from all sources, other than KWSP employment, including grants, loans, and scholarships.

(6) "Full-time enrollment" means the number of credit hours determined by the participating institution to constitute full-time enrollment, which is generally twelve (12) semester hours, twenty-four (24) clock hours, or six (6) summer school hours. Any academic credits earned as a direct result of KWSP employment shall not be considered in the determination of full-time status.

(7) "Prevailing wage rate" means a base rate of pay per hour for KWSP participating students who are or would be performing equal job tasks as other employees, plus benefits paid to other employees having the same status as the KWSP employee.

(8) "School term" means the equivalent of one (1) semester, one (1) quarter, or one (1) summer school term.

(9) "Wage reimbursement" means a payment made to participating employers by participating institutions as reimbursement for wages paid participating students. The rate of reimbursement shall be specified in an agreement between the participating employer and the participating institution.

Section 2. There is hereby established a program of student financial assistance known as the Work Study Program, which may be cited as the KWSP.

Section 3. Institutional Eligibility. To participate in the KWSP, an educational institution shall:

(1) Be a college, business school, vocational school, or school of nursing, as defined in KRS 164.740, located within Kentucky;

(2) Offer an eligible program of study;

(3) Have in force an administrative agreement with the authority pursuant to 11 KAR 4:040;

(4) Submit a request for funding in accordance with instructions specified by the authority; and

(5) Execute any supplemental contractual arrangements with the authority and participating employers required to administer the KWSP.

Section 4. Employer Eligibility. To participate in the KWSP, an employer shall:

(1) Provide a bona fide career related work experience for participating students as determined by the participating institution in which the student is enrolled and submit a descriptive position analysis to the participating institution;

(2) Execute a KWSP employer agreement with each participating

institution from which participating students are hired, or agree with the authority to be bound by the terms of a KWSP employer agreement if the employer is a participating institution;

(3) Provide a Kentucky worksite for all participating students employed by the employer;

(4) [~~Not be a postsecondary educational institution;~~

~~(5)~~] Not be a business entity formed substantially for the purpose or intention of participating in the KWSP;

(5) [~~(6)~~] Not utilize participating students in a work environment that is sectarian in nature or that involves any political activity.

Section 5. Student Eligibility. To participate in the KWSP, a student shall:

(1) Be a citizen of the United States;

(2) Be a Kentucky resident, as determined by the participating institution in accordance with 13 KAR 2:040;

(3) Be enrolled or accepted for enrollment on at least a half-time basis at a participating institution;

(4) Demonstrate financial need;

(5) Be in good standing and making satisfactory academic progress toward completion of his or her educational program, as determined by the participating institution, and have a cumulative grade point average of not less than the equivalent of a "C" (inclusive of all postsecondary courses attempted for postsecondary students or secondary school grade point average for entering freshmen);

(6) Not be participating in other work programs administered by the participating institution;

(7) Not be enrolled in a major course of study in religion, theology, or divinity;

(8) Submit a KWSP application to the participating institution, properly completed in accordance with instructions, and be approved for participation by the participating institution;

(9) Not be in default on any financial obligation to the authority under any program administered by the authority pursuant to KRS 164.740 through 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and

(10) Execute any employment agreements required by the participating institution.

Section 6. Employer Responsibilities. To receive wage reimbursement a participating employer shall:

(1) Immediately notify the participating institution in writing if a participating student's employment is terminated, stating the reason for and effective date of termination;

(2) Report promptly to the participating institution all significant changes of the position analysis or the student's work assignment;

(3) Submit to the participating institution on a regular basis a certified, accurate proof of wages paid to participating students;

(4) Pay participating students the prevailing wage rate, which shall not be less than the federal minimum wage;

(5) Comply with all federal and state employment, safety and civil rights laws applicable to the positions filled;

(6) Not, without prior consent of the participating institution, permit or require participating students to work in excess of:

(a) Thirty (30) hours per week for students currently enrolled less than full time;

(b) Twenty (20) hours per week for students currently enrolled full time; and

(c) Forty (40) hours per week for students employed under an alternate work plan;

(7) Permit on-site inspection and review of records by representatives of the participating institution and the authority during normal business hours; and

(8) Ensure that regular employees are not displaced by KWSP participating students.

Section 7. Student Responsibilities. Participating students shall:

(1) Participate in all screening or preplacement activities required by the participating institution;

(2) Maintain eligibility pursuant to Section 5 of this administrative regulation, and immediately notify the participating institution in writing of all changes that affect the student's continued eligibility;

(3) Be available for a job interview if requested by a participating employer; and

(4) Perform all reasonable employment obligations and comply with all reasonable policies and requirements of the participating employer.

Section 8. Appeals regarding student or employer participation shall be directed to the participating institution and shall be reviewed, settled or determined by an appeal committee consisting of no fewer than three (3) individuals. Appeals regarding institutional eligibility or participation shall be determined by the authority in accordance with 11 KAR 4:020.

Section 9. Forms and Agreements. All forms and agreements utilized in the administration of the KWSP shall be provided or approved by the authority. No alteration of any forms or agreements used in the administration of the KWSP shall be binding against the authority without the prior consent of the authority. The KWSP application is available to students at participating institutions or from the authority at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: March 24, 1993

FILED WITH LRC: April 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, May 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: In the current academic year, 14 Kentucky colleges and universities and all of the state tech schools participate in the KHEAA Work Study program in the role of postsecondary institutions. It is estimated that the same institutions will participate in the program in the coming academic year (1993-94). Under the proposed amendment, each of these institutions would also be allowed to participate as employers if they choose to do so.

(a) Direct and indirect costs or savings to those affected:

1. First year: If an educational institution chooses to employ student under this program, it will receive salary reimbursement from KHEAA at the rate of $2 per hour (the same rate as is paid to other employers).

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The amendment should have no negative

impact upon competition among employers or educational institutions. The change that permits educational institutions to participate as employers was made to provide employment opportunities for students where such opportunities are otherwise limited. Additionally, pursuant to agreement, the educational institutions are required to use at least 50% of KHEAA work study funds to place student in private sector jobs.

(b) Reporting and paperwork requirements: The proposed amendment makes no change in the paperwork or reporting requirements.

(2) Effects on the promulgating administrative body: None. The proposed amendment expands the category of eligible employers to include educational institutions in order to provide job opportunities to students where such opportunities are otherwise limited. However, this change will not result in any additional cost or savings to the agency. Rather, it will tend to assure full utilization of appropriated funds for the benefit of students.

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: The proposed amendment does not change the paperwork and reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The change that permits educational institutions to participate as employers was made to provide employment opportunities for students where such opportunities are otherwise limited.

(b) Reporting and paperwork requirements: The proposed amendment makes no change in the paperwork or reporting requirements.

(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. This regulation prescribes eligibility for participation in a voluntary program providing student financial assistance benefits. Tiering was not applied, because the regulation sets uniform eligibility standard. Disparate treatment of any person or entity affected by 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.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY) (Proposed Amendment)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3)

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), Acts 1992, c. 462, Part 1, F., 42., p. 1908 [~~HB 799 (1990 RS), Part I, F., 46., p. 52~~]

NECESSITY AND FUNCTION: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. House Bill 799 appropriated funds for a new program of teacher scholarships. The General Assembly has expressed a desire, in a budget memorandum prepared under KRS 48.300(2) to accompany House Bill 799, that prior recipients of loans pursuant to KRS 156.611, 156.613, 164.768 and 164.770 should be eligible for benefits under this new program. This administrative regulation delineates eligibility criteria and repayment obligations related to scholarships provided under the new program and establishes a capability for refinancing of prior loans. This amendment is necessary to provide a method of selection of applicants within applicant groups in the event of insufficient funds. [~~remove the deficiency determined by the Administrative Regulation Review Subcommittee of the Legislative Research Commission on September 4, 1991.~~]

Section 1. Definitions. As used in this administrative regulation, the terms listed below shall have the following meanings:

(1) "Critical shortage area" means an understaffing of teachers for particular subjects, grade levels, or geographic locations as determined by the authority from any sources considered reliable, including, but not limited to, consultation with local and state school officials.

(2) "Eligible program of study" means an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification, and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.

(3) "Qualified teaching service" means teaching the major portion of each school day for at least seventy (70) days each semester in a public school or a private school certified pursuant to KRS 156.160(3), of the Commonwealth.

(4) "Semester" means a period of about eighteen (18) weeks, which usually makes up one-half (1/2) of a school year or one-half (1/2) of a participating institution's academic year.

(5) "Participating institution" means an institution of higher education located in Kentucky, which offers an eligible program of study and has in force an agreement with the authority providing for administration of this program.

Section 2. Eligibility. (1) The authority may, to the extent of appropriations and other funds available to it for this purpose, award teacher scholarships to persons enrolled or accepted for enrollment at participating institutions, who declare an intention to render qualified teaching service, and who are eligible under subsections (3) and (4) of this section.

(2) The authority shall, except for limitations imposed by subsection (5) of this section, cancel the repayment obligation of recipients of teacher scholarships who render qualified teaching service in accordance with Section 5 of this administrative regulation.

(3) Kentucky residents who are enrolled or accepted for enrollment in an eligible program of study on a full-time basis at a participating institution and who agree to render qualified teaching service upon completion of the program of study shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for teacher scholarships if they meet the following criteria:

(a) High school graduates with no college hours must rank academically in the top ten (10) percent of their high school graduating class or score at or above the 80th percentile on an instrument approved by the Council on Higher Education for admission to Kentucky's institutions of higher education.

(b) Certified teachers seeking recertification in order to teach in a critical shortage area must have a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on prior undergraduate studies or a 3.0 on a 4.0 scale on prior graduate studies. A certified teacher, who initially enrolls for recertification to teach in a designated critical shortage area, shall continue to benefit from that designation for so long as the teacher pursues that recertification, notwithstanding a change in the critical shortage area designation subsequent to the initial enrollment.

(c) Applicants with earned college hours must have attained at least the equivalent of a 2.5 grade point average on a 4.0 scale for all undergraduate work and a 3.0 on a 4.0 scale for all graduate work and must be currently enrolled or accepted for enrollment in a

postsecondary institution.

(4) Persons enrolled full time at a participating institution in an eligible program of study who have previously received a teacher loan or a mathematics and science incentive loan, pursuant to KRS 156.611, 156.613, 164.768 or 164.770, or a teacher scholarship pursuant to this section, not in excess of the aggregate limit prescribed by Section 3 of this administrative regulation, shall be eligible, except for limitations imposed by subsection (5) of this section, to apply for additional teacher scholarships if they:

(a) Have maintained continuous full-time enrollment, exclusive of periods of approved deferment, in an eligible program of study;

(b) Have made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution; and

(c) Have attained a cumulative grade point average of at least the equivalent of 2.5 on a 4.0 scale on all prior undergraduate studies and at least 3.0 on a 4.0 scale on all prior graduate studies.

(5) No teacher scholarship shall be awarded nor promissory note cancellation granted to any person who is in default on any obligation to the authority under any program administered by the authority pursuant to KRS 164.740 to 164.785 until such financial obligations to the authority are satisfied, except that ineligibility for this reason may be waived by the executive director of the authority at the recommendation of a designated staff review committee, for cause.

(6) Selection process. Applicants shall be considered and teacher scholarships shall be awarded in the following descending order until funds are depleted:

(a) Qualified renewal applicants pursuant to subsection (4) of this section. If funds are insufficient to award full scholarships to all renewal applicants each scholarship shall be reduced by a percent necessary to prevent overexpenditure of funds;

(b) Certified teachers seeking recertification in a critical shortage area, ranked in descending order by cumulative postsecondary grade point average;

(c) Currently enrolled postsecondary students who have been admitted to a teacher education program, ranked in descending order by cumulative postsecondary grade point average as of the application date;

(d) Currently enrolled postsecondary students who have not yet been admitted to a teacher education program, ranked in descending order by cumulative postsecondary grade point average as of the application date; and

(e) High school seniors ranked by weighted selection scores that include rank in high school class (thirty (30) percent), high school grade point average (forty (40) percent), and American College Test (ACT) Composite Standard Score (thirty (30) percent).

Section 3. Award Maximums. The maximum teacher scholarship award shall be $1,250 for a summer session, $2,500 for a semester, and $5,000 for an academic year (exclusive of a summer session). Awards shall not exceed the student's total cost of attendance less other aid received as determined by the participating institution. The aggregate maximum of teacher scholarship awards shall not exceed $20,000 per individual.

Section 4. Disbursements. Disbursement of teacher scholarships shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) Recipients shall render one (1) semester of qualified teaching service as repayment for each semester or summer term of scholarship received, except that recipients who teach in a critical shortage area shall render one (1) semester of qualified teaching service as repayment for two (2) semesters or summer terms of scholarships received. Once an area is designated as a critical shortage area, a recipient who renders uninterrupted qualified teaching service in that designated area shall continue to benefit from the designation, notwithstanding a change in the critical shortage area designation.

(2) Recipients who have outstanding mathematics and science incentive loans or teacher loans pursuant to KRS 156.611, 156.613, 164.768 or 164.770 may execute a new promissory note under the terms of this program in full satisfaction of the outstanding balance of prior promissory notes. The new promissory notes shall be cancelled in accordance with subsection (1) of this section.

(3) In the event that a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, such teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) If a recipient ceases to be enrolled on a full-time basis in an eligible program of study at a participating institution prior to completion of the program of study or otherwise fails to attain certification after completion of the eligible program of study, he shall immediately become liable to the authority to pay the sum of all teacher scholarships received and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(2) Recipients failing to render qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all outstanding teacher scholarships and accrued interest thereon, unless the authority, in its sole discretion, grants a deferment for cause.

(3) Persons liable for repayment of teacher scholarships under this section shall be liable for interest accruing on each promissory note from the respective dates on which the teacher scholarships were disbursed.

(4) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum, except that promissory notes shall provide that if a judgment is rendered to recover payment, the judgment shall bear interest at a rate five (5) percent greater than the rate actually charged on the promissory note.

Section 7. Notifications. Recipients shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of full-time enrollment in an eligible program of study;

(3) Employment in a qualified teaching service position; or

(4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of students receiving aid under this program and the

disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. Participating institutions shall provide assurances that program information will be disseminated to students enrolled at their institutions. Participating institutions shall actively recruit students from minority population groups for participation in this program.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: March 24, 1993

FILED WITH LRC: April 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, May 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: For the 1993-94 academic year, approximately 654 students have already applied for teacher scholarships.

(a) Direct and indirect costs or savings to those affected: Applicants are seeking average teacher scholarship awards of $4,425 each.

1. First year: For the 1993-94 academic year, $1,588,900 is available for teacher scholarships from appropriated funds. This amount is insufficient to award full scholarships to all eligible applicants. Consequently, the administrative regulation is proposed to be amended to use the cumulative grade point average as a ranking criteria within categories of applicants in order to allocate limited funds. The first category of eligible applicants are those who have previously received teacher scholarship awards and are seeking additional funds to complete their education. All applicants (165 individuals) in this category will receive scholarships totalling $730,125. The next category of applicants considered are new applicants who have been admitted to a teacher education program. 322 applicants are in this category, but funds are insufficient to make meaningful awards to all of these applicants. Therefore, under the proposed amendment, the applicants would be ranked based on the cumulative grade point average, and $858,775 would be awarded to the first 194 applicants in that category. The remaining applicants would necessarily be denied any awards due to insufficient funds.

2. Continuing costs or savings: Unknown. Funding levels are dependent upon appropriation in the next biennial budget.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None.

(b) Reporting and paperwork requirements: The proposed amendment merely provides a method of ranking eligible applicants to allocate limited funds. No change is made in the reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: None. The proposed amendment merely provides a method of ranking eligible applicants to allocate limited funds. All appropriated funds available for making teacher scholarship awards will be expended. The proposed amendment will not result in any savings to the agency, nor will it result in any significant increase in administrative cost.

(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: The proposed amendment will not change the paperwork or reporting requirements of the agency.

(3) Assessment of anticipated effect on state and local revenues: None. A specified amount of state funds have been appropriated for this program and remain available for the 1993-94 academic year. All appropriated funds will be expended for teacher scholarship awards.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to ranking applicants to allocate limited funds would be to make pro rata reduction in the amount of awards made to all eligible applicants. This would not result in scholarship awards that would be substantial enough to assist the applicants in meeting their educational costs, nor provide the necessary element of incentive to enter a teacher education program which is the underlying purpose of this program. Cumulative grade point average was deemed to be the most objective, equitable method of ranking and differentiating among eligible applicants.

(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? Yes. The proposed amendment provides a method of ranking eligible applicants in order to allocate limited funds. This is a form of tiering.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
(Proposed Amendment)

11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund.

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335(1)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY AND FUNCTION: KRS 164A.310(8), 164A.335(5) and 164A.335(1) establishes the statutory framework for payment of benefits to an institution from the program fund. This administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. This amendment is necessary to clarify aspects of the disbursement process.

Section 1. Definitions. (1) "Academic year" shall mean the period beginning July 1 and ending June 30 of the following year.

(2) "Higher education costs" (as defined in KRS 164A.305(7)).

(3) "Investment income" shall mean the earnings from the investments in the program fund.

Section 2. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin [~~within sixty (60) days~~] after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) In the event a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

(4) Except as provided in Section 3 of this administrative regulation, each distribution of benefits shall be paid directly to the beneficiary's institution of higher education.

Section 3. Beneficiary Residing Off Campus. If a beneficiary resides off campus, then, upon written request of the participant the program administrator may [~~shall~~] pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of room and board [~~lodging and meal ticket~~] for an academic period as established by said institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund or exceed the higher education costs for that institution.

Section 4. Nonenrollment. If a beneficiary does not enroll in an institution of higher education by the first academic period of the academic year that begins after the beneficiary attains the age of eighteen (18), or if the beneficiary interrupts enrollment (other than normal intersemester vacation periods), then the program administrator shall refund the balance of payments and investment income remaining in the account in accordance with KRS 164A.350, unless the participant submits either a notice to delay benefits under the participation agreement or a notice to use trust benefits.

Section 5. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in any academic period not exceeding the higher education costs may be paid to the institution for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance in the beneficiary's account remains, then the program administrator shall pay the balance of the payments and the investment income to the participant. The program administrator shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: March 24, 1993

FILED WITH LRC: April 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 28, 1993 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, May 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 canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. In 1991, there were approximately 850,000 children who have not attained the age of 15. The extent of those who will be participants and beneficiaries is unknown. During the 1994 fiscal year, this regulation will affect 33 eligible beneficiaries. Although the number of accounts grows daily, there are currently over 1,400 accounts established and all will eventually be affected by this amendment.

(a) Direct and indirect costs or savings to those affected: The proposed amendment to Section 2(2) will provide minimal savings to participants in the form of additional investment income accumulated by disbursing payments to institutions not earlier than required by the institution. The proposed amendment to Section 3 provides no direct or indirect costs or savings to those affected.

1. First Year: Minimal savings to participants in the form of investment income accumulated for disbursing payments to institutions not earlier than required by the institution; otherwise, no direct or indirect costs or savings.

2. Continuing costs or savings: Minimal savings to participants in the form of investment income accumulated for disbursing payments to institutions not earlier than required by the institution; otherwise, no direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: At matriculation, a participant must submit to the Savings Plan Trust a "Notice to Use Benefits," a "Notice to Extend Payments," or a "Notice to Delay Benefits." The amendment to Section 2(2) will only change the timing in which it is necessary for the Participant to file paperwork with the Savings Plan Trust. This amendment allows greater flexibility. The amendment to Section 3 will reduce the amount of paperwork necessary from a Participant to the Savings Plan Trust to begin the benefits payable process.

(2) Effects on the promulgating administrative body: The amendment to Section 2(2) will allow the administering agency greater flexibility for the distribution of benefits relative to the date the notice is received. The net effect of Section 3 on the administrative agency in adopting this proposed amendment will be minimal. Only one check will be cut (unless unique situations arise) per institution, per academic period; instead of two per account.

(a) Direct or indirect costs or savings: Section 2(2) and Section 3 will allow the Savings Plan Trust to make payment of benefits directly to an institution and still allow the flexibility of payments to participants and beneficiaries who have unique needs. Slightly

reduced costs are anticipated since only one check will be routinely issued to each institution.

1. First year: Minimal savings to administrative agency.

2. Continuing costs or savings: Over future years, savings will become more substantial in the form of accounting, clerical, and administrative staff time.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Savings Plan Trust is required to make payments of benefits on behalf of beneficiaries to an institution. These amendments will reduce the amount of paperwork required by the administrative agency.

(3)Assessment of anticipated effect on state and local revenues: There is no anticipated effect on any state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected. Pursuant to KRS 164A.310(8), 164.330 (5) and 164A.335, this regulation establishes guidelines for the disbursement of benefits from the Savings Plan Trust. This proposed amendment streamlines the benefits payable process for the administrative agency, participant, and beneficiary. The original regulation requires more responsibility on behalf of the participant; this amendment makes the benefits payable process less complicated.

(5) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy in conflict with the proposed amendment.

(a) Necessity of proposed regulation if in conflict: Not applicable. See (5).

(b) In conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable. See (5).

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation prescribes the procedures for benefit payments in a voluntary program providing student financial assistance benefits. Tiering was not applied, because the regulation sets uniform procedures. Despaired treatment of any person or entity affected by this administration 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 STATE
Registry of Election Finance
(Proposed Amendment)

32 KAR 2:050. Conciliation.

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

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

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

(3) If the probable cause to believe finding is made within forty-five (45) days preceding an election, the conciliation attempt shall continue for at least fifteen (15) days from the date of the finding. In all other cases, conciliation attempts by the registry shall continue for at least thirty (30) days, not to exceed ninety (90) days.

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

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

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

(3) Except as provided in subsections (1) and (2) of this section, a complaint filed with the registry, any notification sent by the registry, any investigation conducted by the registry, or any findings made by the registry shall not be made public by the registry without the written consent of the respondent until a written response has been received or the expiration of the fifteen (15) day response period required by Section 3 of 32 KAR 2:030. Upon receipt of a response or the expiration of the fifteen (15) day period, the complaint, response, and materials related thereto, exclusive of investigatory materials; shall be open for public inspection. [~~Except as provided in subsections (1) and (2) of this section, a complaint filed with the registry, any notification sent by the registry, any investigation conducted by the registry, or any findings made by the registry shall not be made public by the registry or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.~~]

(4) Except as provided in subsections (1) and (2) of this section, an action by the registry or by any person, and information derived in connection with conciliation efforts shall not be made public by the registry until a final action with regard to a conciliation attempt is taken.

(5) This administrative regulation shall not be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to applicable Rules of Evidence or Rules of Civil Procedure.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: March 17, 1993
FILED WITH LRC: April 14, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 9 a.m., at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Anita Taylor, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor

(1) Type and number of entities affected: This proposed amendment affects registry staff and all parties to actions before the registry

as a result of complaint or internal investigation.

(a) Direct and indirect costs or savings to those affected:

1. First year: No direct or indirect costs or savings will result from this proposed amendment.

2. Continuing costs or savings: No direct or indirect costs or savings will result from this proposed amendment.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements will result from this proposed amendment.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings will result from this proposed amendment.

2. Continuing costs or savings: No direct or indirect costs or savings will result from this proposed amendment.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements will result from this proposed amendment.

(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenue are expected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The language in the proposed amendment is intended to result in greater fairness, so it appears to be the best alternative.

(5) Identify any statute, administrative regulation government policy which may be in conflict, overlapping, duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This proposed amendment is submitted because the provision relating to confidentiality in Section 1(3) of the original administrative regulation is too far reaching from a constitutional standpoint.

TIERING: Is tiering applied? Tiering is not applied because the provisions relating to investigations apply in a uniform manner.

DEPARTMENT OF STATE
Registry of Election Finance
(Proposed Amendment)

32 KAR 2:060. Advisory opinions.

RELATES TO: KRS 121.135

STATUTORY AUTHORITY: KRS 121.120(1)(g)

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Issuance of Advisory Opinions. Advisory opinions shall be issued by the registry as provided in KRS 121.135(2).

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

Section 6. Advisory Opinion Subscription Service Available. Copies of all advisory opinions issued by the Registry of Election Finance shall be made available to interested parties through subscription at a fee of twenty (20) dollars, renewable annually. Persons wishing to subscribe to the advisory opinion service may contact the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502)564-2226.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: March 17, 1993

FILED WITH LRC: April 14, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 9 a.m., at the

Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Anita Taylor, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor

(1) Type and number of entities affected: This proposed amendment affects all persons having an interest in advisory opinions issued by the registry.

(a) Direct and indirect costs or savings to those affected:

1. First year: The subscription fee has been set initially at $20 per year.

2. Continuing costs or savings: The subscription fee may be increased or decreased in future years depending on the number of opinions issued.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements will result to those affected.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Any costs for the agency such as printing, postage, and staff time should be covered by the subscription fee.

2. Continuing costs or savings: Any costs for the agency such as printing, postage, and staff time should be covered by the subscription fee.

3. Additional factors increasing or decreasing costs: Any increase or decrease in costs will depend upon the number of opinions issued and subscription orders processed.

(b) Reporting and paperwork requirements: The only paperwork involved will be that associated with processing orders for opinions.

(3) Assessment of anticipated effect on state and local revenues: No effects on state and local revenue are expected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this appears to be the most effective way to distribute advisory opinions to interested parties.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not applied because the statutes apply uniformly.

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 April [~~March~~] 15, 1993, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
[~~KSR 01-00-14~~	~~Extraordinary Occurrence Report (Deleted 4/15/93)~~]
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 Limited Issue (Amended 4/15/93)
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
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 15-00-09	Smoking and No Smoking Areas for Inmates and Staff (Added 4/15/93)
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 (Amended 4/15/93)
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: April 15, 1993

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

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 25, 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: 524 employees of the Kentucky State Reformatory, 1400 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 April [~~March~~] 15, 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 05-20-01	Management Information System [~~(Amended 3/15/93)~~]
KSP 06-01-01	nmate Records [~~(Amended 3/15/93)~~]
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release
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 100000-20	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 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-18	Functions of the Classification Committee
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 (Amended 4/15/93)
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: April 15, 1993
FILED WITH LRC: April 15, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 25, 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: 317 employees of the Kentucky State Penitentiary, 795 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 6:070. Kentucky Correctional Institution for Women.

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised April 15, 1993 [~~November 13, 1992,~~] are incorporated by reference and shall be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel on weekdays between 8 a.m. to 4:30 p.m.

KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-04	Institution Purchasing Procedures
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property
KCIW 02-03-02	Inventory and Control of Stores
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen and Staff Canteen
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products (Amended 4/15/93)
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Workers (Amended 4/15/93)
[~~KCIW 11-03-02~~	~~General Guidelines for Food Service Workers (Deleted 4/15/93)~~]
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area (Amended 4/15/93)
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry and Clothing Issuance
KCIW 12-02-03	Donated Items
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 12-04-02	Hair Care Services
KCIW 13-01-01	Provision of Medical and Dental Care
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Examination for Employees
KCIW 13-09-01	Suicide Prevention and Intervention Program
KCIW 13-11-01	Infection Control
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-03-01	Inmate Rule Book
KCIW 15-06-01	Restriction Guidelines
KCIW 16-01-01	Inmate Correspondence [~~(Amended 11/13/92)~~]

KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting Regulations
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Inmate Packages
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines [~~(Amended 11/13/92)~~]
KCIW 17-02-01	Identification Department Admissions
KCIW 17-05-01	Inmate Personal Property Guidelines [~~(Amended 11/13/92)~~]
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-01-03	Honor Program
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities [~~(Amended 11/13/92)~~]
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Preparole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Community Leave

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: April 15, 1993

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

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Tom Campbell, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 141 employees of the Kentucky Correctional Institution for Women, 354 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.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Proposed Amendment)

603 KAR 5:050. Uniform traffic control devices.

RELATES TO: KRS 189.337

STATUTORY AUTHORITY: KRS 189.337, 23 CFR Part 655 Subpart F

NECESSITY AND FUNCTION: KRS 189.337(2) requires the Transportation Cabinet, Department of Highways, to adopt a uniform system of traffic control devices. The Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the Manual on Uniform Traffic Control Devices. This administrative regulation defines the system by incorporating by reference the Manual on Uniform Traffic Control Devices.

Section 1. Traffic Control Devices on All Public Highways. The standards and specifications set forth in the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" shall apply to all traffic control devices installed on any publicly used highway, road or street in Kentucky.

Section 2. Incorporation by Reference. A copy of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways 1988 Edition" revised January 23, 1989 is hereby incorporated by reference as part of this administrative regulation.

Section 3. Availability of Manual. Copies of the Federal Highway Administration publication "Manual on Uniform Traffic Control Devices for Streets and Highways" may be viewed or copied at the Transportation Cabinet, Department of Highways, Division of Traffic, 501 High Street, First Floor, in Frankfort, Kentucky from 8 a.m. until 4:30 p.m. weekdays. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Section 4. Federal Amendments to the Manual. (1) The revision to the Manual on Uniform Traffic Control Devices discussed in Federal Highway Administration Final Rule Docket 87-21, Notice No. 3, effective January 17, 1990 is hereby incorporated by reference as a part of this administrative regulation.

(2) The revision to the Manual on Uniform Traffic Control Devices discussed in Federal Highway Administration Final Rule Docket 87-21, effective March 17, 1992 is hereby incorporated by reference as a part of this administrative regulation.

(3) Copies of the Federal Highway Administration revisions to the Manual on Uniform Traffic Control Devices for Streets and Highways may be obtained, viewed or copied at the Transportation Cabinet, Department of Highways, Division of Traffic, 501 High Street, First Floor, in Frankfort, Kentucky from 8 a.m. until 4:30 p.m. weekdays.

J. M. YOWELL, State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, Secretary

APPROVED BY AGENCY: April 2, 1993

FILED WITH LRC: April 8, 1993 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on May 24, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, 1003 State Office Building, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by May 19, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by May 19, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until May 19, 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, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502)564-4890.

REGULATORY IMPACT ANALYSIS

Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: All governmental agencies in Kentucky responsible for any type of traffic control device.

(a) Direct and indirect costs or savings to those affected: There will be no cost or savings to the public entities governed by The Manual on Uniform Traffic Control Devices as a result of the two revisions incorporated by reference.

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: The Transportation Cabinet is both an affected entity and the promulgating agency. There will be no cost or savings as a result of the two revisions incorporated by reference.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is a federal mandate requiring all newly installed traffic control devices to comply with the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD). Therefore there was no option but to adopt these changes.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The Federal Highway Administration was required by Congress to allow the use of a yield sign at certain highway/railroad crossings.

Tiering: Was tiering applied? Yes. The amount of signage and the use of traffic control devices is tiered based on the type and usage of the particular highway or street.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The Department of Highways or Roads or Public Works in all city and county governments.

3. State the aspect or service of local government to which this administrative regulation relates. Placement of traffic signs and pavement marking on public highways and streets.

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 in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: The local government agencies will be able to implement these changes to the manual as part of their regular road and street maintenance budgets.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate 23 CFR Part 655 Subpart F.

2. State compliance standards. Kentucky has adopted and been guided by the mandated Manual on Uniform Traffic Control Devices for many years.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards: (a) The listing of the type of signs and their placement required on each highway type; and (b) establishes the type and placement of pavement markings required on each highway type.

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. Devices discussed in Federal Highway Administration Final Rule Docket 87-21, effective March 17, 1992 is hereby incorporated by reference as a part of this administrative regulation.

EDUCATION AND HUMANITIES CABINET
Department of Education
Commissioner of Education
(Proposed Amendment)

701 KAR 5:070. Criteria for Commonwealth Institute for Teachers.

RELATES TO: KRS 156.097
STATUTORY AUTHORITY: KRS 156.070, 156.097
NECESSITY AND FUNCTION: KRS 156.097 requires that the State Board for Elementary and Secondary Education develop administrative regulations to establish a summer program of one (1) week educational institutes to be held at selected college campuses for teachers for the purpose of general improvement of instruction. The state board must, further, develop specific criteria relating to the selection of the eligible teachers, with an emphasis on selecting teachers with a demonstrated record of effective teaching, and participating teachers shall be reimbursed for their expenses and awarded a stipend in an amount to be determined by the state board. This administrative regulation establishes the criteria for selection of the teachers, selection of the college campuses, and the amount of the stipend and expenses for the participating teachers.

Section 1. (1) The educational institutes mandated by KRS 156.097 shall be called the Commonwealth Institute for Teachers.

(2) Each institute shall be a minimum of one (1) week duration during the summer.

(3) Each institute may be followed by weekend sessions during the school year following the institute session.

Section 2. (1) A program of professional development [~~theme~~] shall be selected for each year's institute that is designed to improve instruction in the classroom [~~emphasize academic excellence in the schools and to motivate personal, professional excellence among the participants~~].

(2) The program [~~theme~~] shall contribute to the goals of the Kentucky Education Reform Act of 1990 [~~overall goal of the State Board for Elementary and Secondary Education which is the creation of an academically excellent school system in every Kentucky school district~~].

Section 3. (1) The summer institute shall be held on the campuses of Kentucky colleges or universities which are accessible and which can provide appropriate conference facilities, faculty and staff for the conduct of the institute.

(2) The State Board for Elementary and Secondary Education shall make its selections of sites based on recommendations submitted by the Kentucky Department of Education, [~~and~~] assurances of capability provided by the institutions[~~, and experience with preceding institutes~~].

Section 4. (1) Teachers shall apply[~~, either~~] individually [~~or in teams of two (2) or three (3),~~] to attend the Commonwealth Institute[~~,~~] and shall use applications [~~forms~~] supplied by the Kentucky Department of Education [~~institute for the purpose~~].

(2) The applications shall include appropriate information about the applicant, and specifically, shall include an assurance that the applicant, within the school year [~~two (2) months~~] following the summer session of the institute, will submit documentation that institute requirements have been met [~~the name and address of at least one (1) private, public, nonprofit, commercial, business or industry entity within the applicant's community which is willing to cooperate, and indicates its willingness in writing, with the applicant in the action project to expand academic excellence in the school district, which is one (1) component of the institute's activities~~].

(3)Any institute participant who does not (without just cause) complete the institute requirements [~~failing, without just cause, to submit such an agreement~~] shall be required by the Department of Education to return any stipend and expenses paid for participation in the institute.

Section 5. The Commonwealth Institute shall select outstanding teachers with a record of effective teaching which may be demonstrated as follows:

(1) Professional credentials, development, and experience;

(2) Honors, awards, and recognition achieved for effective teaching;

(3) Innovative teaching techniques such as effective curricula developed for use in the applicant's classroom, award-winning students taught by the applicant, and any other appropriate evidence the teacher may wish to include; or

(4) Individual essays expressing initiative and reason for [~~wishing to attend an~~] institute participation.

Section 6. A [~~The~~] selection committee of Department of Education program personnel shall be assigned [~~will be named~~] by the Commissioner of Education the responsibility of selecting participants. [~~and will consist of three (3) institute alumni, two (2) faculty from the institute's host college(s) the preceding year, two (2) faculty from the institute's host college(s) the coming year, and two (2) citizens having an interest in the institute. The Kentucky Department of Education will provide staff support to the selection committee.~~]

Section 7. The [~~Each~~] institute shall serve approximately 100 [~~200~~] teachers.

Section 8. (1) Each teacher shall be paid a stipend of $400 for the week long seminar and follow-up sessions upon the completion of the institute and its requirements.

(2) Meals and lodging expenses shall be paid from the Department of Education appropriation for the Commonwealth Institute[~~, and maximum expense allowance of fifty (50) per teacher per year may be paid to defray the cost of traveling to and from the institute sessions~~].

[~~Section 9. [An amount of ten (10) dollars per participant shall be set aside each year from institute resources to defray the expenses of a commonwealth institute alumni association. The amount shall be used for a network of institute participants for mutual support and sharing of information, experiences, and teaching techniques for further academic excellence. The association may supplement this amount with resources of its own.~~]

Section 9. (1) [~~10.~~] Teachers who have been selected and have attended a Commonwealth Institute may be[~~, are not~~] eligible to attend subsequent Commonwealth Institutes as participants eligible for stipends [~~but may attend sessions as alumni~~].

(2) They may also serve as participants in institute programs or as resource consultants, and may receive any honorariums that may be appropriate in return for rendering specific services to the Commonwealth Institute.

Section 10. [~~11.~~] All Commonwealth Institutes shall provide teachers with professional development activities that support the Kentucky Education Reform Act of 1990 [~~include a study/action project component which shall require the participating teachers to develop and initiate within their home school and community a project for the advancement of academic excellence. The projects shall define the respective roles of the teacher/participants and the partner/sponsor supporting the teacher in carrying out the project. Project outcomes shall be reported and published by the Commonwealth Institute and disseminated throughout Kentucky.~~]

~~Section 12. On behalf of the Commonwealth Institute, the Kentucky Department of Education shall request the cooperation and support of the Kentucky Educational Foundation, Inc. in obtaining the financial support necessary to enable teachers of private and parochial schools to attend the Commonwealth Institute and, in general, in obtaining the required private support for the Commonwealth Institute programs and purposes. In return, the foundation shall receive a cosponsorship of the Commonwealth Institute for Teachers. Financial support provided to the Institute by any other private enterprise or tax exempt entity shall receive appropriate recognition by the Commonwealth Institute, the state board, and the Department of Education.~~]

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 14, 1993
FILED WITH LRC: April 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick
(1) Type and number of entities affected: Insitute applicants are from 176 local school districts.
(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 effect upon competition: None
(b) Reporting and paperwork requirements: Applicant requested to prepare portfolio.
(2) Effects on the promulgating administrative body: KDE review portfolio.
(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: See #2.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Applicable statute requires implementation by regulation.
(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: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied: No. Commonwealth institute applies equally to all local school district certified employees.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:303. Required program of studies.

RELATES TO: KRS 156.070, 156.160, 158.6451, 160.290
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to establish courses of study for the different grades and kinds of common schools, such courses of study to comply with the expected outcomes for students and schools set forth in KRS 158.6451. KRS 156.070(1) gives the state board the management and control of the common schools and all programs operated in such schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the state board. In fulfilling and perpetuating such duties and intent, this administrative regulation prescribes the document containing the general courses for use in Kentucky's common schools.

Section 1. Pursuant to the authority vested in the State Board for Elementary and Secondary Education by KRS 156.160, the "Program of Studies for Kentucky Schools, Grades Primary [~~K~~]-12," as amended on March 10, 1993 [~~July 11, 1990~~], is hereby promulgated and filed with the Legislative Research Commission and incorporated herein by reference. Such document may be inspected and copied at the Division of Curriculum Development, Department of Education, 17th Floor, Capital Plaza Tower, 8 a.m. - 4:30 p.m., Monday through Friday.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 14, 1993
FILED WITH LRC: April 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Betty Edwards

(1) Type and number of entities affected: 176 local school districts and schools.

(a) Direct and indirect costs or savings to those affected: N/A

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition:

(b) Reporting and paperwork requirements: No additional requirements.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: No change.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(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: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: No. Aligns program of studies with Kentucky Education Reform Act.

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the State. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Support Services
(Proposed Amendment)

704 KAR 4:020. Comprehensive school health.

RELATES TO: KRS 156.160, HJR 124 (1990 RS)

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt administrative regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children; and HJR 124 (1990 RS) directs the Cabinet for Human Resources, in conjunction with the Department of Education, to develop a policy to promote appropriate and early diagnosis and treatment of scoliosis by licensed members of the healing arts. This administrative regulation implements the duty of the State Board relative to medical inspections and the physical welfare and safety of public school children; and it formalizes the appropriate interagency agreement on scoliosis detection and treatment.

Section 1. School employee medical examinations shall be required as follows for the protection of the physical welfare and safety of the public school children.

(1) All local boards of education shall require a medical examination of each teacher upon initial employment which shall include a tuberculin skin test. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examinations for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, each teacher shall submit to the local school superintendent a statement indicating his or her medical status.

(2) All local boards of education shall require upon initial employment and each year thereafter a medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and events related to such schools. The medical examination shall include test for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The initial examination shall include tests for tuberculosis and other items mandated by 702 KAR 5:080. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examination for initial employment and any subsequent examinations, as may be required for positive tuberculin reactors, each bus driver shall submit to the local school superintendent a statement indicating his or her medical status. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and entitled, "Physical Examination Form," dated July 1990 (as required by 49 CFR 391.41), [~~Medical Examination Report for School Bus Drivers and Substitute School Bus Driver,~~"] which is incorporated herein by reference, and submitted to the local school superintendent.

(3) All local boards of education shall require a medical examination of each custodian, cafeteria worker, and other classified school employees not specifically covered by subsection (2) of this section upon initial employment. The medical examination shall include tests for tuberculosis, hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. All positive tuberculin reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required evaluation, each employee shall submit to the local school superintendent a statement indicating his or her medical status. Medical examinations shall be reported on forms prescribed by the State Department of Education and entitled, "Medical Examination of School Employees," dated January 1993, which is incorporated herein by reference.

(4) The local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to be examined for tuberculosis. The evaluation and any required treatment for tuberculosis infection shall be based upon the recommendations of the local board of health and the standards developed by the Cabinet for Human Resources.

(a) Any personnel exposed to infectious tuberculosis shall be tested and, if necessary, treated for tuberculosis infection according to the recommendation of the local board of health.

(b) In counties with high incidence rates for tuberculosis infection defined as equal to or greater than one (1) percent, the local board of health may, with the approval of the Cabinet for Human Resources, exercise its legal sanction to require more extensive testing for tuberculosis than outlined above.

Section 2. (1) Effective with the 1993-94 school year, all local boards of education shall require a medical examination of each child within six (6) months prior to[~~, or one (1) month following,~~] his or her initial admission to school. Local school boards may extend this time

not to exceed two (2) months. [~~, and, effective with the 1992-93 school year,~~] A second examination shall be required within one (1) year [~~six (6) months~~] prior to entry into the sixth grade. Both [~~The initial~~] medical examinations may be [~~,~~] performed and signed for by a physician, advanced registered nurse practitioner (ARNP), physician's assistant (PA), or by a health care provider in the early periodic screening diagnosis and treatment (EPSDT) programs. The medical examinations shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," January, 1993 [~~October 29, 1991~~], which is incorporated herein by reference, and shall include a medical history; record of immunizations and tuberculosis testing; assessment of growth and development and general appearance; physical assessment including hearing and vision screening; and recommendations to the school regarding health problems that may require special attention in classroom or physical education activities. Local school districts shall establish a plan for implementation and compliance with the sixth grade physicals. A valid immunization certificate shall be presented prior to school enrollment. [~~The second student physical may be performed and signed for by an advanced registered nurse practitioner (ARNP) or by a health care provider in the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program and shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," October 29, 1991, which is incorporated herein by reference, and shall include the same medical information as described for the initial student physical.~~]

(2) All boards of education shall adopt a program of continuous health supervision for all school enrollees; supervision shall include scheduled, appropriate screening tests for vision, hearing and scoliosis. The need for any further tuberculin skin test shall depend on the risk of exposure of the child and prevalence of tuberculosis in the community, and the need is to be determined pursuant to KRS 214.034. Local spinal screening programs for scoliosis shall include:

(a) Training sessions for teachers or lay volunteers who will be doing the screening;

(b) Obtaining parental permission for scoliosis screening;

(c) Established screening times, at least in grades six (6) and eight (8) and appropriate procedures and referral criteria, with the Department of Education to provide technical advice on these areas;

(d) Mandated education of students regarding scoliosis screening; and

(e) Required referral of all children with abnormal screening results for appropriate diagnosis and treatment and follow-up on these referrals. Local referral and follow-up procedures shall include:

1. Notification of parents of students who need further evaluation by a physician;

2. Tracking referrals to determine whether [~~assure that~~] all children with abnormal screening results receive appropriate diagnosis and treatment; and

3. Reporting of data on screening, referral and follow-up tracking to the Department of Education.

(3) The Department of Education shall appropriately monitor the spinal screening and referral programs provided by local boards of education, provide consultation and technical assistance to local boards of education concerning spinal screening, referral and follow-up for appropriate diagnosis and treatment, and encourage local school systems to work cooperatively with local health departments and local Commission for Handicapped Children offices to plan, promote and implement scoliosis screening programs.

(4) An effective mechanism for referral and appropriate follow-up of any apparent abnormality noted by screening assessment or teacher observation shall be recorded on school health records within nine (9) weeks of screening program or detection of abnormality.

(5) Each school shall have emergency care procedures. The emergency care procedures shall include:

(a) First aid facilities, including provisions for designated areas for the child to recline;

(b) At least two (2) adults in each school, at least one (1) of whom shall be present in the school at all times and both of whom shall [~~who~~] have completed and been certified in a standard first aid course which includes CPR for infants and children;

(c) Parents' telephone number, or a number at which parents can be reached;

(d) Name of family physician; and

(e) Means of transportation.

(6) Local boards of education shall require all vaccinations and immunizations and tuberculosis testing as required by law or regulations:

(a) Except as otherwise provided by law, all children shall be required to present a valid immunization certificate upon enrollment in school, and a valid up-to-date immunization certificate shall be on file for all children at all times. All children shall also present a tuberculin test certificate or the school medical examination form to the public or private school showing tuberculin skin test administration within one (1) year prior to initial enrollment in school. The governing body of private and public schools shall enforce the provisions of this subsection in accordance with the established laws.

(b) Children transferring into any school district shall comply with the above requirements.

Section 3. (1) Each elementary and secondary school shall initiate a cumulative health record for each pupil entering school. Such record shall be maintained throughout the pupil's attendance Such record shall be uniform and shall be on forms prescribed by the Department of Education and entitled "Pupil's Cumulative Health Record," dated January 1993, which is incorporated herein by reference. Such record shall include screening tests related to growth and development, vision and hearing; teacher observations of general appearance and behavior; and findings and recommendations of physician and dentist including immunization record. A follow-up by the proper health or school authorities shall be made on each defect noted and the result shall be recorded.

(2) Local school authorities shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. All boards of education shall, in relation to each school under its jurisdiction, provide and maintain a physical environment that is conducive to the health and safety of school children: It shall be the responsibility of all local boards of education to comply with current laws and administrative regulations applicable to all public buildings pertinent to health, sanitation, and safety. In accordance with current administrative regulations and standards by authorities having jurisdiction, it shall be the responsibility of all local boards of education to establish:

(1) An adequate supply of water of safe, potable, sanitary quality.

(2) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste.

(3) Adequate toilet and lavatory facilities, including soap or detergent as well as towels or other methods for drying hands in every school, and other sanitary fixtures.

(4) Adequate heating, lighting, and ventilation in all school buildings.

(5) Adequate facilities and equipment for cafeterias and lunchrooms.

(6) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment.

(7) Adequate first aid facilities.

(8) Adequate control of air pollutants.

(9) Universal precautions guidelines in each school compatible with Occupational Safety and Health Administration (OSHA) guidelines.

Section 5. Each board of education shall designate a person to

serve as school health coordinator. The person designated shall meet the minimum qualifications required of this position. The school health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department of [~~for Elementary and Secondary~~] Education, [~~and~~] the local health department, family resource and youth services centers and parents in planning, promoting, and implementing a school health services program that meets the administrative regulations adopted by the State Board for Elementary and Secondary [~~of~~] Education.

Section 6. Each local board of education shall require an annual medical examination of each child as a prerequisite for eligibility in interscholastic athletics. A local board of education may require the examination to be paid by the parent of the child.

Section 7. All forms incorporated herein by reference may be inspected, copied, and obtained from the Division of Student/Family Support Services, School/Community Resource Branch, Department of Education, 17th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Terry Vance

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: Potentially reduced costs to parents for student physical.

2. Continuing costs or savings: Savings in reduction of health problems and improve attendance.

3. Additional factors increasing or decreasing costs (note any effect upon competition: Potentially decreasing costs to parents for initial student physical.

(b) Reporting and paperwork requirements: Paperwork requirements remain the same - must file in student's cumulative folder.

(2) Effects on the promulgating administrative body: No effect.

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: Improved student attendance.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Remain the same - must file in student's cumulative folder.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied: No. Health regulations need to be uniform across the state.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 3:040. Special appointments.

RELATES TO: KRS 151B.035

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations consistent with KRS 151B.035, which govern the various types of appointments, such as probationary, emergency, seasonal, temporary, and other such regulations not inconsistent with KRS 151B.035 as may be proper and necessary.

Section 1. Filling of Vacancies. All vacancies in the certified and equivalent personnel system which are not filled by promotion, transfer, demotion, or probationary appointment shall be filled by reemployment, reinstatement, seasonal appointment, temporary appointment, or emergency appointment.

Section 2. Seasonal, Temporary, and Emergency. Seasonal, temporary, and emergency appointments may be made by the commissioner without regard for the minimum requirements of the position.

Section 3. Detail to Special Duty. When the services of a limited or continuing status employee are needed in a position other than the position to which regularly assigned, the employee may be detailed to that position for a period not to exceed one year with prior approval of the commissioner. For detail to special duty, the commissioner may waive the minimum requirements.

Section 4. Dual Appointments. The commissioner may authorize appointments of employees serving in two (2) positions. [~~The salary shall not exceed the maximum hourly salary of the full time position.~~] The commissioner may [~~shall~~] develop guidelines setting the number of hours [~~per week~~] which may be worked in the part-time position.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: March 18, 1993

FILED WITH LRC: April 15, 1993 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, May 25, 1993 at 10 a.m. (EDT) in Room 306, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing my May 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing

is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. Contact Person: Tara H. Parker, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, KY 40601 Phone: 502/564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly H. Haverstock

(1) Type and number of entities affected: The only entities affected by this regulation are those employees in the Department for Adult and Technical Education, approximately 662, who may be authorized by the commissioner to serve in two positions.

(a) Direct and indirect costs or savings to those affected: Those employees will not be affected by costs or savings.

(1) First year: No affects.

(2) Continuing costs or savings: No affects.

(3) Additional factors increasing or decreasing costs: (Note any affects upon competition) No factors increase or decrease costs to these dual appointees.

(b) Reporting and paperwork requirements: There will be no change in reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: By removing the maximum hourly salary cap, the Department for Adult and Technical Education will be able to obtain the services of employees who command a salary incentive to work two jobs.

(a) Direct and indirect costs or savings: Since most of the programs that would be taught by employees holding two positions are cost recovery programs, sponsored by business and industry, there are very few costs or savings to the agency.

(1) First year: No costs are predicted.

(2) Continuing costs or savings: No costs or savings are predicted.

(3) Additional factors increasing or decreasing costs: So long as the programs offered are cost recovery for the agency, there are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements are the same as they are now for dual appointees.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state or local revenues anticipated by the change in this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: In order to meet the training needs of the Commonwealth, it is necessary to employ certain individuals in two positions. There are no alternative methods to providing this needed service in some cases; therefore, the commissioner needs the authority to approve a salary incentive for dual employment.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping, or duplicating statutes, rules or regulations, or governmental policies.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied: No. The effect of the removal of the maximum hourly salary cap for part-time position for dual employment employees is the same for all.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 9:020. High school equivalency diploma.

RELATES TO: KRS 151B.110, 151B.125

STATUTORY AUTHORITY: KRS 151B.110, 151B.125

NECESSITY AND FUNCTION: KRS 151B.125 establishes and recognizes the GED test for high school equivalency purposes in Kentucky and allows a five (5) dollar fee to be assessed for duplicate equivalency diplomas. This regulation establishes the means whereby a high school equivalency diploma can be issued through the Department for Adult and Technical Education to adults who pass the GED test.

Section 1. All GED test scanner sheets from official testing centers shall be sent to the Department of Adult and Technical Education for scoring. The Department of Adult and Technical Education shall provide a high school equivalency diploma to local boards of education to be issued to each applicant who has taken the GED test and who Has scored at least thirty-five (35) on each of the five (5) GED tests and has an overall average standard score of forty-five (45) on all five (5) tests when they are considered as a whole.

Section 2. There shall be no minimum age requirement for issuance of a high school equivalency diploma to military personnel or veterans.

Section 3. GED test scores shall be accepted as official only when they are reported by official testing centers; the United States Armed Forces Institute; directors of Veterans Administration hospitals; and the GED testing service.

Section 4. There shall be no charge for the issuance of a high school equivalency diploma. A five (5) dollar fee shall be assessed for the issuance of a duplicate GED diploma or a score report (transcript). Said fees shall be used to support the adult education program.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: March 18, 1993

FILED WITH LRC: April 15, 1993 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, May 25, 1993 at 10 a.m. (EDT) in Room 306, 3rd Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing my May 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. Contact Person: Tara H. Parker, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, KY 40601 Phone: 502/564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly H. Haverstock

(1) Type and number of entities affected: The only entities

affected are the GED examinees who request a duplicate GED Score Report (or transcript).

(a) Direct and indirect costs or savings to those affected: The cost is to the individual examinee who requests a duplicate transcript.

(1) First year: Cost is $5 per duplicate transcript (approximately 1,000 requests are received per year).

(2) Continuing costs or savings: Continuing costs are $5 per duplicate transcript (approximately 1,000 per year).

(3) Additional factors increasing or decreasing costs: (Note any affects upon competition) The only additional factor affecting cost is the number of individual requests for duplicate transcripts.

(b) Reporting and paperwork requirements: The examinees requesting duplicate transcripts would need to make payment. (2) Effects on the promulgating administrative body: The Office of Adult Education will recover costs of duplicating and sending GED Score Reports (or transcripts).

(a) Direct and indirect costs or savings: Fees will offset costs of duplicating and sending GED Score Reports (or transcripts).

(1) First year: It is estimated that 1,000 requests will be received for a total savings of $5,000 for the Commonwealth.

(2) Continuing costs or savings: It is estimated that approximately $5,000.00) in costs will be recovered per year.

(3) Additional factors increasing or decreasing costs: Costs are affected by the numbers of requests received and filled by the agency.

(b) Reporting and paperwork requirements: Minimal. Accounting for the fees received would be required.

(3) Assessment of anticipated effect on state and local revenues: State revenues would increase by $5,000 as an offset to former costs of approximately the same amount.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are available to recover these costs.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: The agency is not aware of any statute, rule, or regulation or governmental policy which may conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied: No. The fee for a is minimal, and everyone is treated the same.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 3:150. Standards for insurers deemed to be in hazardous financial condition.

RELATES TO: KRS 304.3-200, 304.33-140

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes standards which the Commissioner of Insurance may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to policyholders, creditors, or the public.

Section 1. Definitions. [~~As used in this regulation:~~] (1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance; and

(2) "Insurer" means any of the entities listed in KRS 304.33-020.

Section 2. Standards. One (1) or more of the following standards may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in Kentucky may be deemed to be hazardous to policyholders, creditors, or to the general public:

(1) Adverse findings reported in financial condition or market conduct examination reports;

(2) The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;

(3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income which could lead to an impairment of capital and surplus;

(4) Whether the insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;

(5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;

(6) Whether the insurer's operating loss in the last twelve (12) month period or any shorter period of time, such as net capital gain or loss, change in nonadmitted assets, or cash dividends paid to shareholders, is greater than fifty (50) percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;

(8) Any contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in transmission or payment of net premiums to the insurer;

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in that position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry;

(13) Whether management of an insurer either has filed any false or misleading sworn financial statement, has released a false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

(14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; or

(15) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.

Section 3. Corrective Action. (1) For the purposes of making a determination of an insurer's financial condition under this regulation, the commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken with the next twelve (12) month period.

(2) If the commissioner determines that the continued operation of the insurer in Kentucky may be hazardous to policyholders, creditors, or to the general public, the commissioner may, upon his determination, issue an order requiring the insurer to:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) Reduce, suspend, or limit the volume of business being accepted or renewed;

(c) Reduce general insurance and commission expenses by specified methods;

(d) Increase the insurer's capital and surplus;

(e) Suspend or limit the declaration and payment of dividends by an insurer to stockholders or policyholders;

(f) File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;

(g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) Document the adequacy of premium rates in relation to the risks insured; or

(i) File, in addition to regular annual statements, interim financial reports in the form of and pursuant to the instructions for the quarterly statements prescribed by the National Association of Insurance Commissioners (life and accident and health and fire and casualty, as revised in 1993 [~~1990~~], incorporated by reference and available for inspection and copying at [~~from~~] the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-2807 [~~1875~~], 8 a.m. - 4:30 p.m. (ET)), weekdays.

(3) Any insurer subject to an order under subsection (2) of this section may request a hearing to review the order. The hearing, and judicial review thereof, shall be conducted as provided in KRS 304.2.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: March 22, 1993
FILED WITH LRC: April 15, 1993 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for May 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 May 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: The proposed amendment is needed to update the reference to quarterly statement forms and instructions prescribed by the National Association of Insurance Commissioners. The current administrative regulation refers to forms and instructions prescribed in 1990. The amendment refers to the forms and instructions prescribed in 1993. The proposed amendment also makes technical changes needed to comply with the requirements of KRS Chapter 13A.

(1) Type and number of entities affected: The proposed amendment applies to 1,200 insurers authorized to do business in Kentucky.

(a) Direct and indirect cost or savings to those affected:

1. First year: None
2. Continued cost or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed amendment requires insurers filing quarterly statements to use the most current forms and instructions prescribed by the National Association of Insurance Commissioners.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continued costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: If the Department of Insurance requires an insurer to file quarterly statements due to hazardous financial condition, quarterly statements must be submitted on the forms and instructions prescribed by the National Association of Insurance Commissioners in 1993.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: In order to incorporate material by reference, KRS 13A.2251(1)(a) requires the administrative regulation to contain the effective date of the material incorporated by reference. Therefore, there is no alternative to amending this administrative regulation.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

TIERING: Tiering is applied in that there are separate forms and instructions for fire and casualty insurers and life and health insurers.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS Chapter 13A[~~.350~~]
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation is to outline the requirements for jockeys and apprentice jockeys.

Section 1. Probationary Mounts. Any person desiring to participate in this state as a rider and who never previously has ridden in a race may be permitted to ride in three (3) races before applying for a license as a jockey or apprentice jockey; provided, however:

(1) The person is a licensee with at least one (1) year of service with a racing stable;

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship to be permitted the probationary mounts;

(3) The starter has schooled the person breaking from the starting gate with other horses and approves the person as capable of starting a horse properly from the starting gate in a race;

(4) The stewards in their sole discretion are satisfied the person intends to become a licensed jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in the race. No person shall ride in any probationary races without prior approval of the stewards.

Section 2. Qualifications for License. In addition to the administrative regulations applicable to licensees under 810 KAR 1:003, a holder of a license as a jockey or apprentice jockey:

(1) Shall be sixteen (16) years of age or older and licensed under his legal name which shall be listed in the daily race program;

(2) Shall have served at least one (1) year with a racing stable;

(3) Shall have ridden in at least three (3) races;

(4) Shall, when required by the stewards, provide a medical affidavit certifying the person is physically and mentally capable of performing the activities and duties of a licensed jockey.

Section 3. Amateur or Provisional Jockey. An amateur wishing to ride in races on even terms with professional riders, but without accepting fees or gratuities therefor, shall be approved by the stewards as to competency of horsemanship, shall be granted an amateur jockey's license, and his amateur status shall be duly noted on the daily race program. A licensed owner or licensed trainer, upon approval by the stewards, may be issued a provisional jockey's license to ride his own horse or horse registered in his care as trainer.

Section 4. Apprentice Allowance. Any person sixteen (16) years of age or older, who never previously has been licensed as a jockey in any jurisdiction, and who is qualified under Section 2 of this administrative regulation, may claim in all purse races except handicaps the following weight allowances:

(1) Ten (10) pounds until he has ridden five (5) winners, and seven (7) pounds until he has ridden an additional thirty (30) winners; if he has ridden a total of thirty-five (35) winners prior to the end of one (1) year from the date of riding his fifth winner, he shall have an allowance of five (5) pounds until the end of that year.

(2) After the completion of conditions in subsection (1) of this section a contracted apprentice for one (1) year may claim three (3) pounds when riding horses owned or trained by his original contract employer; provided, his contract has not been transferred or sold since his first winner. The original contract employer shall be deemed the party to the contract who was the employer at the time of the apprentice jockey's first winner. No apprentice allowances may be claimed for a period in excess of three (3) years from the date of the rider's fifth winner.

(3) An apprentice jockey may enter into a contract with a licensed owner or licensed trainer qualified under Section 5 of this administrative regulation for a period not to exceed five (5) years. The contracts shall be approved by the stewards and filed with the racing commission shall be binding in all respects on the signatories thereof. An apprentice who is not contracted shall be given an apprentice jockey certificate, on a form furnished by the commission.

(4) If an apprentice jockey is unable to ride for a period of fourteen (14) consecutive days or more because of service in the armed forces of the United States, physical disablement, or restrictions on racing, the commission upon recommendation of the stewards and after consultation with the racing authority which first approved the original apprentice contract, may extend the time during which the apprentice weight allowance may be claimed for a period no longer than the period the apprentice rider was unable to ride.

(5) After completion of conditions in subsection (1) of this section, the rider shall be issued a license as a jockey before accepting subsequent mounts. Under these circumstances, the commission may waive collection of an additional license fee.

Section 5. Rider Contracts. All contracts between an employer owner or trainer and employee rider shall be subject to the administrative regulations of Kentucky [~~State~~] Racing Commission. All riding contracts for terms longer than thirty (30) days, as well as any amendments thereto, cancellation, or transfer thereof, shall be in writing with signature of parties thereto notarized, and shall be approved by the stewards and filed with the commission. The stewards may approve a riding contract and permit parties thereto to participate in racing in this state if the stewards find that:

(1) The contract employer is a licensed owner or licensed trainer who owns or trains at least three (3) horses eligible to race at the time of execution of the contract;

(2) The contract employer possesses the character, ability, facilities, and financial responsibility as may be conducive to developing a competent race rider;

(3) The contracts for apprentice jockeys provide for fair remuneration, adequate medical care, and an option equally available to both employer and apprentice jockey to cancel the contract after two (2) years from date of execution.

Section 6. Restrictions as to Contract Riders. No rider may:

(1) Ride any horse not owned or trained by his contract employer in a race against a horse owned or trained by his contract employer;

(2) Ride or agree to ride any horse in a race without consent of his contract employer;

(3) Share any money earned from riding with his contract employer;

(4) Accept any present, money, or reward of any kind in connection with his riding of any race except through his contract employer.

Section 7. Calls and Engagements. Any rider not so prohibited by prior contract may agree to give first or second call on his race-riding services to any licensed owner or trainer. These agreements, if for terms of more than thirty (30) days, shall be in writing, approved by the stewards, and filed with the commission. Any rider employed by a racing stable on a regular salaried basis may not ride against the stable which so employs him. No owner or trainer shall employ or engage a rider to prevent him from riding another horse.

Section 8. Jockey Fee. (1) The purpose of this section is not to establish a minimum or maximum fee, but merely to provide a fee the parties have not made any other agreement to the contrary. The fee to a jockey shall be, in the absence of special agreement, as follows:

(a) Purse $2,000 to $3,400: Winning mount, ten (10) percent of win purse; Second mount, $45; Third mount, $35; Losing mount, $30.

(b) Purse $3,500 to $4,900: Winning mount, ten (10) percent of win purse; Second mount, $55; Third mount, $45; Losing mount, $35.

(c) Purse $5,000 to $9,900: Winning mount, ten (10) percent of win purse; Second mount, $65; Third mount, $50; Losing mount, $40.

(d) Purse, $10,000 to $14,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $45.

(e) Purse, $15,000 to $24,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $50.

(f) Purse, $25,000 to $49,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $60.

(g) Purse, $50,000 to $99,900: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $75.

(h) Purse, $100,000 and up: Winning mount, ten (10) percent of win purse; Second mount, five (5) percent of second purse; Third mount, five (5) percent of third purse; Losing mount, $100.

(2) A jockey fee shall be considered earned by a rider when he is weighed out by the clerk of scales except:

(a) When a rider does not weigh out and ride in a race for which he has been engaged because an owner or trainer engaged more than one (1) rider for the same race; in such case, the owner or trainer shall pay an appropriate fee to each rider engaged for the race.

(b) When a rider capable of riding elects to take himself off the mount without, in the opinion of the stewards, proper cause.

(c) When a rider is replaced by the stewards with a substitute rider for a reason other than a physical injury suffered by the rider during the time between weighing out and start of the race.

Section 9. Revised Order of Finish After Race is Declared Official. If a winning purse is forfeited through subsequent ruling of the stewards or racing commission, after the result has originally been made official, the winning fee shall be paid to the jockey whose

mount is ultimately adjudged the winner, and the original winner shall be credited only with a losing mount.

Section 10. Duty to Fulfill Engagements. Every rider shall fulfill his duly scheduled riding engagements, unless excused by the stewards. No rider shall be required to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a rider's refusal to fulfill a riding engagement is based on a personal belief unwarranted by the facts and circumstances, the rider may be subject to disciplinary action.

Section 11. Presence in Jockey Room. (1) Each rider who has been engaged to ride in a race shall be physically present in the jockey room no later than one (1) hour prior to post time for the first race on the day he is scheduled to ride, unless excused by the stewards, or the clerk of scales; and upon arrival shall report to the clerk of scales his engagements. If a rider should fail for any reason to arrive in the jockey room prior to one (1) hour before post time of a race in which he is scheduled to ride, the clerk of scales shall so advise the stewards who may name a substitute rider and shall cause a public announcement to be made of the rider substitution prior to opening of wagering on the race.

(2) Each rider reporting to the jockey room shall remain in the jockey room until he has fulfilled all his riding engagements for the day, except to ride in a race, or except to view the running of a race from a location approved by the stewards. No rider shall have contact or communication with any person outside the jockey room other than an owner or trainer for whom he is riding, a racing official, or a representative of the regular news media, until the rider has fulfilled all his riding engagements for the day.

(3) The association shall be responsible for security of the jockey room so as to exclude all persons except riders scheduled to ride on the day's program, valets, authorized attendants, racing officials, duly accredited members of the news media, and persons having special permission of the stewards to enter the jockey room.

(4) Any rider intending to discontinue riding at a race meeting prior to its conclusion shall notify the stewards of his intent to depart after fulfilling his final riding engagement of the day.

Section 12. Weighing Out. (1) Each rider engaged to ride in a race shall report to the clerk of scales for weighing out not more than one (1) hour and not less than fifteen (15) minutes before post time for each race in which he is engaged to ride, and at the time of weighing out shall declare overweight, if any.

(2) No rider shall pass the scale with more than one (1) pound overweight, without consent of the owner or trainer of the horse he is engaged to ride; in no event shall a rider pass the scale with more than five (5) pounds overweight.

(3) No horse shall be disqualified because of overweight carried.

(4) Whip, blinkers, number cloth, bridle, goggles, and rider's safety helmet shall not be included in a rider's weight.

Section 13. Wagering. No rider shall place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is riding. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and the record shall be available for examination by the stewards at all times.

Section 14. Attire. Upon leaving the jockey room to ride in any race, each rider shall be neat and clean in appearance and wear the traditional jockey costume with all jacket buttons and catches fastened. Each jockey shall wear the cap and jacket racing colors registered in the name of the owner of the horse he is to ride, stock tie, white or light breeches, top boots, safety helmet approved by the commission, and a number on his right shoulder corresponding to his mount's number as shown on the saddle cloth and daily racing program. Beginning January 1, 1994, each jockey or jockey apprentice shall wear in all races a safety vest which shall provide a minimum of shock protection to the upper body of a five (5) rating as defined by the British Equestrian Trade Association. A safety vest shall weigh no more than two (2) pounds and shall not be included in the jockey's weight when weighing out to race. The clerk of scales and attending valet shall be held jointly responsible with a rider for his neat and clean appearance and proper attire.

Section 15. Viewing Films or Tapes of Races. Every rider shall be responsible for checking the film list posted by the stewards in the jockey room the day after riding in a race. The posting of the film list shall be considered as notice to all riders whose names are listed thereon to present themselves at the time designated by the stewards to view the patrol films or video tapes of races. Any rider may be accompanied by a representative of the jockey organization of which he is a member in viewing the films, or with the stewards' permission, be represented at the viewing by his designated representative.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: April 13, 1993

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

PUBLIC HEARING: A public hearing will be held on May 21, 1993 at 10 a.m., at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Bldg. B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency contact person: Michael A. Fulkerson

(1) Type and number of entities affected: Approximately 240 jockeys and 29 apprentice jockeys will be affected.

(a) Direct and indirect costs or savings to those affected: Cost of the safety vest is around $200 each. The jockey/apprentice jockey is responsible for purchasing their own. Savings will be human life & reduced internal injuries.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Yes. The safety vest has been proven to reduce the number of internal injuries and save lives of jockeys/apprentice jockeys.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Proposed Amendment)

811 KAR 1:070. Licensing; owners, drivers, trainers, grooms and agents.

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700, 230.710
STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)
NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to set out the requirements of and to provide for the licensing of owners, trainers, drivers, grooms and agents.

Section 1. Owners. Every person owning a horse that is entered at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. Said application shall be on forms provided by the commission and shall be filed at any commission office. Such license shall be presented to the clerk of the course at the time said horse is entered in a race.

Section 2. Leased Horses. Any horse under lease must race in the name of the lessee and a copy of such lease must be filed with the Kentucky [~~Harness~~] Racing Commission. No horse shall race under lease without an eligibility certificate issued by the United States Trotting Association in the name of the lessee and the lessee is a current licensee of the commission in good standing. Persons violating this rule may be fined, suspended or expelled.

Section 3. Driver's Application for License. Every person desiring to drive a harness horse at a race meeting licensed by the commission shall be required to obtain a license from the commission and the United States Trotting Association. Such application shall be on forms provided by the commission. Applications may be filed at any commission office. Such license shall be presented to the clerk of course before driving. Pending a valid license by the United States Trotting Association, the commission may, at its discretion, issue a provisional or full driver's license to those who qualify as hereinafter set out.

Section 4. Qualification for a Provisional and/or Full Driver's License. (1) Every applicant for a provisional license to drive a harness horse at a race meeting licensed by the commission in addition to any other requirements mentioned herein shall:

(a) Submit evidence of good moral character.

(b) Submit evidence of his ability to drive in a race and, if he is a new applicant, this must include the equivalent of one (1) year's training experience. Any new applicant for a driver's license shall be approved by the presiding judge and a committee of three (3) "A" class drivers appointed by the United States Trotting Association District Six (6) Chairman.

(c) Be at least eighteen (18) years of age.

(d) Furnish a completed application form.

(e) Submit satisfactory evidence of an eye examination indicating 20/40 corrected vision in both eyes, or if one (1) eye blind, at least 20/30 corrected vision in the other eye; and, when requested, submit evidence of physical and mental ability and/or submit to a physical examination.

(f) No person sixty (60) years of age or older who has never held any type of driver's license previously shall be issued a driver's license.

(g) When requested, submit a written examination at a designated time and place to determine his qualifications to drive and his knowledge of racing and the rules. In addition, any driver who presently holds a license and wishes to obtain a license in a higher category, who has not previously submitted to such written test, shall be required to take a written test before becoming eligible to obtain a license in a higher category.

(h) No applicant who has previously held any type of driver's license shall be subsequently denied a driver's license solely on the basis of age.

(2) A full license will be granted to an applicant who qualifies for a provisional license and has acquired:

(a) At least one (1) year's driving experience while holding a provisional license from the United States Trotting Association.

(b) Twenty-five (25) satisfactory starts in the calendar year preceding the date of his application at an extended pari-mutuel meeting.

(3) In the event any person is involved in an accident on the track, the commission may order such person to submit to a physical examination and such examination must be completed within thirty (30) days from such request or his license may be suspended until compliance therewith.

(4) All penalties imposed on any driver may be recorded on the reverse side of his commission driver's license by the presiding judge.

(5) The Kentucky [~~Harness~~] Racing Commission reserves the right to require any driver to take a physical examination at any time

Section 5. Trainers' Application for License. An applicant for a license as trainer shall be licensed by the United States Trotting Association and must be at least eighteen (18) years of age and satisfy the commission that he possesses the necessary qualifications both mental and physical, to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a trainer in the preparation, training, entering and managing of horses for racing.

Section 6. Absence of Trainers. When any licensed trainer is absent from a racing meet for more than six (6) days, it shall be the duty of the trainer to appoint and have properly licensed a new trainer of record.

Section 7. Grooms' Application for License. An applicant for a license as a groom must satisfy the commission that he possesses the necessary qualifications, both mental and physical to perform the duties required. Elements to be considered, among others, shall be character, reputation, temperament, experience, knowledge of the rules of racing and of the duties of a groom. No license shall be issued to applicants under sixteen (16) years of age.

Section 8. (1) The holder of a license issued by the United States Trotting Association or a holder of a license issued by the Kentucky [~~Harness~~] Racing Commission for the prior year, may be presumed to be qualified to receive a license, all others must be tested by the deputy commissioner (supervisor of racing), his assistant, or agent of the commission, at such locations as shall be designated by the commission as to the capability of said applicant for a license to perform the functions required of him. Said tests shall be either in writing or by demonstrations or both and shall be administered in a uniform manner. The cost of said testing shall be borne by the applicant.

(2) A holder of a current qualifying license issued by the United States Trotting Association may be allowed to drive a horse that is already qualified, however, if the horse does not meet the standards of the meeting, the horse shall be placed on the stewards list. If a race is held solely for qualifying drivers, the race may not be charted. A race solely for qualifying drivers must have more than four (4) starters.

Section 9. The following shall constitute disorderly conduct and be reason for a fine, suspension, or revocation of an owner's, driver's, trainer's, or groom's license:

(1) Failure to obey the judges' or other officials' orders that are expressly authorized by the rules of this commission.

(2) Failure to drive when programmed unless excused by the judges.

(3) Drinking intoxicating beverages within four (4) hours of the first post time of the programs on which he is carded to drive.

(4) Appearing in the paddock in an unfit condition to drive.

(5) Fighting.

(6) Assaults.

(7) Offensive and profane language.

(8) Smoking on the track in colors during actual racing hours.

(9) Warming up a horse prior to racing without colors.

(10) Disturbing the peace.

(11) Refusing to take a breath analyzer test when directed by the presiding judge, deputy commissioner (supervisor of racing), or assistant deputy commissioner (assistant supervisor of racing).

Section 10. Colors and Helmet. Drivers must wear distinguishing colors, and clean white pants, and shall not be allowed to start in a race or other public performance unless in the opinion of the judges they are properly dressed. From the time it becomes necessary to wear colors before the races, no one will be permitted to jog, train, warm up or drive a horse during a race meet licensed by the Kentucky [~~Harness~~] Racing Commission unless he or she is wearing a protective safety helmet, with the chin strap fastened and in place, that meets the standards and requirements as set forth in the Snell Memorial Foundation's 1984 Standard For Protective Headgear For Use In Harness Racing. This standard is hereby incorporated by reference. Any equestrian helmet bearing the Snell label shall be deemed to have met the performance requirements as set forth in the standards.

Section 11. Misconduct in Colors. Any driver wearing colors who shall appear at a betting window or at a bar or in a restaurant dispensing alcoholic beverages shall be fined not to exceed $100 for each such offense.

Section 12. Driver Change. No driver can, without good and sufficient reasons, decline to be substituted by the judges. Any driver who refuses to be so substituted may be fined or suspended, or both by order of the judges.

Section 13. Amateur Definition. An amateur driver is one who has never accepted any valuable consideration by way of or in lieu of compensation for his services as a trainer or driver during the past ten (10) years.

Section 14. Registered Colors. Drivers holding an "A" license or drivers with a "V" license who formerly held an "A" license, shall register their colors with the United States Trotting Association. Registered stables or corporations may register their racing colors with the United States Trotting Association.

WAYNE G. LYSTER, III, Chairman

APPROVED BY AGENCY: April 13, 1993

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

PUBLIC HEARING: A public hearing will be held on May 21, 1993 at 10 a.m., at the offices of the Kentucky Racing Commission at the Kentucky Horse Park, 4063 Iron Works Pike, Building B, Lexington, Kentucky. Those interested in attending the hearing should contact in writing: Michael A. Fulkerson, Chief Administrative Officer, Kentucky Racing Commission, 4063 Iron Works Pike, Bldg. B, Lexington, Kentucky 40511.

REGULATORY IMPACT ANALYSIS

Agency contact person: Michael A. Fulkerson

(1) Type and number of entities affected: New applicants for a drivers license. Will affect about five drivers per year.

(a) Direct and indirect costs or savings to those affected: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs to the administrative body.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Minimal reporting and paperwork.

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Yes. This is an added safety measure to ensure the safety of all drivers in harness races.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A.

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest

edition of the specification.

(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: April 8, 1993

FILED WITH LRC: April 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 25, 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 May 20, 1993, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing

will not be made unless a written request for a transcript is 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: Manufacturers of new products not yet made Part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: (Note any affects upon competition)

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(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: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenue: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping or duplication: This is the only known law or policy dealing with this product.

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.107, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Registered or certified [~~Qualified~~] dietician" or "certified nutritionist" means a person who is registered or certified in accordance with KRS Chapter 310.[~~:~~

~~(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or~~

~~(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or~~

~~(c) A person who has bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.~~]

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(10) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(12) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis

and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at such meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. Such reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment. No skin testing is required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis. Two (2) step skin testing is required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment. All staff who have never had a skin test of ten (10) or more millimeters induration must be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, must receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5 Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;

2. Health records;

3. Evidence of current registration, certification, or licensure of personnel;

4. Records of training and experience;

5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

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

2. Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by centers for disease control and Occupational Safety and Health Administration guidelines. [~~Recapping of needles which have been used in or have come into direct contact with a patient, shall only be performed using a mechanical device designed and marketed for that purpose. Sterile needles may be recapped.~~]

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes, but is not limited to viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. Physician's, or dentist's when applicable, progress notes and nurses' observations;

12. Record of temperature, blood pressure, pulse and respiration;

13. Final diagnosis using terminology in the current version of the

International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. Discharge summary, including condition of patient on discharge, and date of discharge;

15. In case of death, autopsy findings, if performed; and

16. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

5. Procedures for the hospital administrator or his designee to report any information about the possible sale, purchase, or brokering of a transplantable organ to the Cabinet for Human Resources, Office of the Inspector General, as required by KRS 311.241(3).

(d) No patient with impending or declared brain death and/or cardiopulmonary death as determined pursuant to KRS 446.400 should be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his/her patient. A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty- four (24) hours after admission to the hospital.

(c) The attending medical staff member shall state his final diagnosis, complete the discharge summary and sign the records within thirty (30) days following the patient's discharge.

(d) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(e) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. No medication or treatment shall be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to licensed practical or registered nurses or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. No form of patient restraint or protective device other than bed rails shall be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered or certified ~~[qualified]~~ dietician or certified nutritionist, either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage,

handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. ~~[Laboratory services shall be under the direction of a pathologist on a full time, regular part time, or a consultative basis.]~~ The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Laboratory services shall be under the direction of a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

7. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the minimum proficiency testing and quality control provisions in accordance with Medicare certification requirements.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the

pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service. If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient [~~and/~~]or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be

organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(i) The hospital shall comply with the provisions of KRS 214.175 in participating in surveys relating to the determination of alcohol or other substance abuse among pregnant women and newborn infants.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

WILLIAM M. GARDNER, Inspector General
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: April 13, 1993

FILED WITH LRC: April 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for May 21, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by May 16, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Eric Friedlander and Ralph Von Derau

(1) Type and number of entities affected: 125

(a) Direct and indirect costs or savings to those affected: It is extremely difficult to determine the exact cost impact of the amendments to this regulation. These amendments address the issues of the definition of dietitian/nutritionist, conformance with OSHA standards relating to the recapping of needles, reporting the possible

sale of transplantable organs in accordance with KRS 311.241(3), clarification that licensed practical nurses and registered nurses may receive telephone orders, conformance with HCFA and JCAHO standards as they relate to the director of laboratory services, permit deemed status for hospital laboratory services, and require hospitals to participate in surveys regarding alcohol or other substance abuse among pregnant women and newborn infants in accordance with KRS 214.175.

I. First Year: Impossible to determine, but should cause a slight decrease in costs.

2. Continuing costs or savings: Impossible to determine.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: Section 3(12)(c)5 is amended to include reporting requirements when a hospital suspects the possible sale of a transplantable organ, and Section 4(12)(i) is amended to require hospitals to participate in surveys relating to alcohol or other substance abuse among pregnant women and newborns.

(2) Effects on the promulgated administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

I. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to reflect the most current standards of the Joint Commission for the Accreditation of Health Care Facilities, and legislation passed by the 1992 General Assembly.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. These standards are contained in 42 CFR 482.2 - 482.60.

2. State compliance standards. 902 KAR 20:016 - Hospital Operation and Services; 902 KAR 20:009 - Hospital Facility Specifications.

3. Minimum or uniform standards contained in the federal mandate. Standards relate to personnel, nursing, infection control, provision of services, dietary, laboratory, physical plant, environment, organizational structure, staff responsibility, clinical records, and governing body.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation is written to be implemented along with the federal standards. Federal standards are general in nature, so that specific standards as they relate to these areas do not exist.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:013. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.575, 1992 Acts c. 462, Part I.G.52.b.2

STATUTORY AUTHORITY: KRS 194.050, 1992 Acts c. 462, Part I.G.52.b.2., 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4

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. KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments. This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. Except as specified in Section 5 of this administrative regulation, the policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised April 1, 1993 [~~July 1, 1992~~], which is incorporated by reference in this administrative regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern time in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. General Description of the Payment System. Except as specified in Section 5 of this administrative regulation the following provisions shall be applicable for purposes of setting inpatient hospital payment rates.

(1) Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However,

total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year shall be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, shall be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used shall be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor shall be applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) shall be peer grouped according to bed size. The peer groupings for the payment system shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals shall not be peer grouped but shall have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature shall not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits with regard to services provided on or after July 1, 1991.

(a) The following upper limits and payment principles shall apply to all hospitals with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1. For acute care hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. Effective with regard to payments for the quarter ending June 30, 1992 and thereafter, the HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the amounts remaining, from the hospital assessments paid, for distribution to hospitals after exclusion of appropriate amounts for administrative expense, the contingency reserve amount, and amounts reserved for other program needs in accordance with budget commitments, obligations, and appropriations, or other budgetary necessity, and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D(b)(2), (3), (4), and (5). No hospital participating in HICAP shall receive on an annual basis less than five and one-quarter (5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section.

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of

the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 4. Payments to Participating Out-of-state Hospitals. This section shall be effective except as specified in Section 5 of this administrative regulation.

(1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission, participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

Section 5. Special Payment Rates and Upper Limits Period. For the period beginning on April 1, 1993 and ending on December 31, 1993 acute care and rehabilitation hospital payment rates and upper limits shall be the same rates (including necessary adjustments for audits or other purposes) and upper limits as the rates and upper limits in effect for the rate period of January 1, 1992 through December 31, 1992.

Section 6. The changes shown in this administrative regulation shall be effective with regard to services provided on or after April 1, 1993.

JANIE A. MILLER, Acting Commissioner

FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: February 19, 1993

FILED WITH LRC: March 30, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 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 May 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: Kim 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 hospitals participating in the Medicaid program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $25.2 million savings.

2. Continuing costs or savings: $25.2 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:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, APRIL 15, 1993

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:120. Permanent committees; disposition of unexpended funds upon termination.

RELATES TO: KRS 121.180(10)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: KRS 121.180(10) provides the manner in which candidates, campaign committees, and political issues committees may dispose of unexpended funds at the end of an election campaign. KRS Chapter 121 makes no provision for the disposition of unexpended funds by a permanent committee as it terminates. It is therefore necessary to promulgate this administrative regulation to establish the manner in which a permanent committee may dispose of unexpended funds.

Section 1. A permanent committee as defined in KRS 121.010(3)(c) which intends to terminate its activity and registration with the Registry of Election Finance shall, prior to filing its final report with the registry, dispose of any unexpended balance of funds not otherwise obligated. Unexpended funds, in whole or in part, shall, at the termination of the committee:

(1) Escheat to the State Treasury;

(2) Be returned pro rata to all contributors; or

(3) In the case of a partisan, single-candidate permanent committee or a permanent committee organized to support candidates of a single political party, be transferred to the state or county party executive committee, provided that total aggregate contributions made by the committee to the state executive committee and all affiliates, including transfers under this administrative regulation do not exceed the maximum contribution limit contained in KRS 121.150(11).

Section 2. Any disposition of funds pursuant to Section 1 of this administrative regulation shall be reflected on the final report submitted to the registry by the permanent committee.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: March 17, 1993
FILED WITH LRC: April 14, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 9 a.m., at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Anita Taylor, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor
(1) Type and number of entities affected: This proposed administrative regulation would affect approximately 200 permanent committees. Also, there are currently 146 local education PACs in addition to KEPAC, which would be affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: There should be no additional costs or savings as a result of this administrative regulation.

2. Continuing costs or savings: There should be no additional costs or savings as a result of this administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: As a permanent committee terminates, it will have to file quarterly reports until it has a zero balance.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There should be no additional costs or savings as a result of this administrative regulation.

2. Continuing costs or savings: There should be no additional costs or savings as a result of this administrative regulation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no additional paperwork for the agency because permanent committees are required to file quarterly. As committees terminate, paperwork will decrease, but the decrease in the number of committees is a result of legislative action, and is unrelated to this administrative regulation.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This was the best method to fill in a gap in the statutory provisions governing disposition of unexpended funds.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 121.180(1) governs the manner in which candidates, campaign committees, and political issues committees may dispose of unexpended funds. KRS Chapter 121 makes no provision for the disposition of funds for permanent committees as they terminate. (This is a result of amendments to KRS 121.180(10).) That section should be amended to include permanent committees.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not applied because all permanent committees are subject to uniform requirements throughout the campaign finance laws.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:130. Cash contributions, cashier's checks, and money orders.

RELATES TO: KRS 121.150(4)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: KRS 121.150(4) prohibits a candidate, committee, or contributing organization, or anyone on their behalf, from accepting a cash contribution in excess of ($100). However, that statute does not clearly indicate whether the limitation applies per election, per candidate, or per contribution. Also, KRS Chapter 121 contains no definition of "cashier's check" which creates the potential for a cashier's check which bears no identification of the payor to be utilized as a means of circumventing campaign contribution limits. It is therefore necessary to promulgate this administrative

regulation to clarify the application of KRS 121.150(4).

Section 1. The limitation on cash contributions contained in KRS 121.150(4) shall be applied per contributor for each candidate in each primary and regular election.

Section 2. No candidate, campaign committee, or contributing organization nor anyone acting on their behalf shall accept a cashier's check or money order in excess of the maximum cash contribution limit contained in KRS 121.150(4) unless the instrument clearly identifies both the payor and payee. A contribution made by cashier's check or money order which identifies the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in KRS 121.150.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: March 17, 1993

FILED WITH LRC: April 14, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 9 a.m., at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Anita Taylor, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor

(1) Type and number of entities affected: This proposed administrative regulation would affect all candidates for public office, committees, and contributing organizations, as well as those persons who may make contributions thereto.

(a) Direct and indirect costs or savings to those affected:

1. First year: This administrative regulation will not result in any increased costs or savings to affected parties.

2. Continuing costs or savings: This administrative regulation will not result in any increased costs or savings to affect parties.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Those affected will have to report contributions by cashier's check or money orders which do not identify the payer or payee as cash. Those with identifying information will be reported in the same manner as a contribution by check.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not result in any increased costs or savings to the agency.

2. Continuing costs or savings: This administrative regulation will not result in any increased costs or savings to the agency.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation will not increase paperwork for the agency, but it will require more accurate reporting.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is an area of campaign finance which has never really been regulated, and the provisions of this administrative regulation will serve to ensure compliance with the cash contribution limitation contained in KRS 121.150.

(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 registry would like to see the provisions of this administrative regulation enacted into statute during the 1994 session of the General Assembly.

TIERING: Is tiering applied? Tiering is not applied because the provisions of KRS 121.150 apply uniformly to affected persons.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:140. Revocation of exemption forms, reversion rights; August filers.

RELATES TO: KRS 121.180(1)

STATUTORY AUTHORITY: KRS 121.120(1)(g) NECESSITY AND FUNCTION: KRS 121.180(1) outlines the availability of exemptions from certain campaign finance reporting requirements, including the deadlines both for filing and revocation of exemption forms. While a candidate may revoke his exemption statement, the law does not clearly indicate whether a candidate who revokes a statement within the time allowed may execute another exemption form. Also, no provision is made for those candidates who are not required to file to run for office until August. Because the provisions of KRS 121.180(1) were enacted in an effort to decrease paperwork generated by candidates who raise and spend relatively little money, it is necessary to promulgate this administrative regulation to enable the registry to carry out the purpose of KRS 121.180(1) as intended by the General Assembly.

Section 1. A candidate who revokes an exemption form in a timely manner may exercise the remaining exemption option or may file all reports required of a candidate intending to raise or spend in excess of $3,000 in an election. If a candidate elects to exercise a different option, he shall file the appropriate form with the officer who received his filing papers not later than the deadline for filing a revocation. A candidate who violates the terms of any exemption form which has not been timely revoked shall be subject to the provisions of KRS 121.180(1)(d).

Section 2. Any candidate who is subject to an August filing deadline and who intends to execute a request for exemption shall file the appropriate request for exemption not later than the filing deadline and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. A candidate covered by this section shall have the same reversion rights as those provided for other candidates in Section 1 of this administrative regulation.

JOSEPH H. TERRY, Chairman

APPROVED BY AGENCY: March 17, 1993

FILED WITH LRC: April 14, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 9 a.m., at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing

is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Anita Taylor, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor

(1) Type and number of entities affected: This proposed administrative regulation potentially affects every candidate for public office in the Commonwealth. For 1993, there are approximately 7,500 candidates.

(a) Direct and indirect costs of savings to those affected:

1. First year: The only costs to those affected would be those associated with the preparation and submission of reports to the registry which would increase or decrease depending upon the exemption form signed.

2. Continuing costs or savings: The only costs to those affected would be those associated with the preparation and submission of reports to the registry which would increase or decrease depending upon the exemption form signed.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: A candidate's paperwork would increase or decrease depending upon the exemption form, if any, he chooses to sign. If he signs the $250 form, no reports are due; the $3,000 form, one report is due; no exemption form, three reports are due.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The registry will incur costs or savings related to staff time, depending upon the number of reports filed.

1. First year: The registry will incur costs or savings related to staff time, depending upon the number of reports filed.

2. Continuing costs or savings: The registry will incur costs or savings related to staff time, depending upon the number of reports filed.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: A major purpose of the exemption forms is to minimize paperwork generated by candidates who spend little or no money in their campaigns. It is the position of the registry that by promulgating this administrative regulation, that purpose will be furthered. For example, if a candidate files the $3,000 exemption form, finds on the filing deadline that he has no opposition, and then, under this proposal, revokes that form and signs a $250 exemption form in the time allowed, he would have to file no reports for the primary.

(3) Assessment of anticipated effect on state and local revenues: No effects on revenue are anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because this appeared to be the only method by which the registry can effectively carry out the purpose of the exemption provision.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict since KRS 121.180(1) is silent as to whether a candidate should be allowed to change exemptions. It merely provides for revocation.

(a) Necessity of proposed regulation if in conflict: The registry would propose that KRS 121.180 be amended to place the provisions of this administrative regulation in the law.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Implementation of KRS 121.180(1) has been very difficult for several reasons. First, the provisions became effective July 14, 1992, so they applied to the 1992 general election, but not the primary. Secondly, it has been difficult to educate candidates as to the significance of the exemption forms, especially in light of the serious penalty for violation. The registry believes that while it will still take time to educate the candidates, the approval of this proposed administrative regulation will have a positive effect on the agency's ability to carry out the purpose of the statute until such time as the General Assembly may consider an amendment to KRS 121.180(1).

TIERING: Is tiering applied? Tiering is not applied because the provisions of KRS 121.180 apply to all candidates in a uniform manner.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:150. Three (3) judge panel; appointment; procedure.

RELATES TO: KRS 121.140(4)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.140(4) provides for the referral to a three (3) judge panel cases which cannot be resolved through conciliation. It is necessary to promulgate this administrative regulation to effectively implement this statutory mandate.

Section 1. Appointment of Panel. (1) Upon the failure of respondent to accept a conciliation agreement proposed by the Registry of Election Finance as provided by KRS 121.140(2) and (3), the general counsel shall, within five (5) days, refer the case to the Chief Justice of the Kentucky Supreme Court and request that a three (3) judge panel be appointed pursuant to KRS 121.140(4). Not later than fifteen (15) days following receipt of the referral from the registry, the Chief Justice shall appoint three (3) active or retired justices or judges of the Court of Justice to conduct a hearing on the matter, and shall notify the general counsel of the appointments and the date scheduled for hearing which shall be scheduled no later than forty-five (45) days from the appointment of the panel. The general counsel shall provide notice to the complainant and the respondent as provided in KRS 121.140(4).

(2) A justice or judge appointed by the Chief Justice pursuant to subsection (1) of this section and KRS 121.140(4) shall disqualify himself in a proceeding in which his impartially might reasonably be questioned, including but not limited to instances where:

(a) The judge has a personal bias or prejudice toward a party to the action or has personal knowledge of disputed evidentiary facts of the case;

(b) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

1. Is a party to the action;

2. Is acting as a lawyer in the proceeding;

3. Is known by the judge to have an interest which could be substantially affected by the outcome of the proceeding; or

4. Is to the judge's knowledge likely to be a material witness in the proceeding;

(3) A judge or justice who believes he is required by subsection (2) of this section to disqualify himself from serving as a member of a three (3) judge panel shall immediately notify the Chief Justice of that fact, and the Chief Justice shall appoint a replacement within three (3) days of receipt of the notification.

Section 2. Except as provided in Section 1 of this administrative regulation, the Kentucky Rules of Civil Procedure shall govern hearings before the three (3) judge panel.

Section 3. The location of hearings shall be determined by the Chief Justice. Judges or justices appointed to serve on a three (3) judge panel shall receive reimbursement for their reasonable and necessary expenses incurred as a result of the performance of their duties.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: March 17, 1993
FILED WITH LRC: April 14, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 9 a.m., at the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Anita Taylor, Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Taylor
(1) Type and number of entities affected: This proposed administrative regulation would affect the registry, judges appointed to panels, and all parties to actions emanating from the registry as a result of complaints or internally-generated matters.
(a) Direct and indirect costs or savings to those affected:
1. First year: The costs associated with this administrative regulation will be payment of expenses for judges, court reporters, attorney fees incurred by respondents, and staff time involved in hearings.
2. Continuing costs or savings: The costs associated with this administrative regulation will be payment of expenses for judges, court reporters, attorney fees incurred by respondents, and staff time involved in hearings.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs will increase or decrease in direct proportion to the number of hearings held.
(b) Reporting and paperwork requirements: The only paperwork will be that required for communication, including notices and pleadings, between the Chief Justice, judges, the registry, and the parties involved.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Costs for the registry will be the staff time and preparation for hearings.
2. Continuing costs or savings: Costs for the registry will be the staff time and preparation for hearings.
3. Additional factors increasing or decreasing costs: Costs will increase or decrease in direct proportion to the number of hearings held.
(b) Reporting and paperwork requirements: The only paperwork will be that required for communication, including notices and pleadings, between the Chief Justice, judges, the registry, and the parties involved.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because creation of the three-judge panel is statutorily mandated.
(5) Identify any statute, administrative regulation government policy which may be in conflict, overlapping, duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? Tiering is not applied because the provisions of KRS 121.140(4) relate to all parties uniformly.

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority

200 KAR 17:060. Guidelines for solid waste revolving fund.

RELATES TO: KRS 224A.011, 224A.040, 224.043, 224A.270
STATUTORY AUTHORITY: KRS 224A.070(1), 224A.270
NECESSITY AND FUNCTION: KRS 224A.070(l) requires the Kentucky Infrastructure Authority to administer the solid waste revolving fund and KRS 224A.040(6) requires the authority to evaluate all applications recommended for financial feasibility. It is the intent of the Kentucky Infrastructure Authority to implement a financial feasibility analysis and funding process for loans to be made from the solid waste revolving fund, by promulgating administrative regulations to establish this process.

Section I. Definitions. For the purposes of this regulation the words and terms shall have the same meaning as in KRS 224.01-010 and 224A.011, with the following additions:
(l) "Applicant" shall mean a governmental agency that has submitted an application for financial assistance from the solid waste revolving fund including any agency or instrumentality of the foregoing.
(2) "Application" shall mean an application on Natural Resources DEP Form No. 7096, provided for in 401 KAR 49:210, submitted for a loan from the solid waste revolving fund, which has been prioritized by the Division of Water Management, Natural Resources and Environmental Protection Cabinet.
(3) "Authority staff" means the officers of the authority and other individuals employed by the Office for Financial Management and Economic Analysis to carry out day-to-day operations of the Kentucky Infrastructure Authority.
(4) "Conditional commitment letter" shall mean a letter delivered to an applicant by the authority stating the authority's commitment to provide financial assistance, which commitment may require that certain conditions be met by the applicant by a specific date.
(5) "Closing date" shall mean the date on which a project is substantially complete, with all amendments to the assistance agreement having been executed.
(6) "Index rate" shall mean the average of the Bond Buyer's Index of twenty (20) year G.O. Bonds as published weekly in the Bond Buyer (a financial newspaper) calculated based on the weeks following within each calendar quarter. This average shall be rounded to the nearest one-tenth (.l) of one (l) percent.
(7) "Interest rate" shall mean the rate of interest charged an applicant for financial assistance from the solid waste revolving fund.
(8) "Preclosing date" shall mean the date of execution of an assistance agreement with an applicant who has met the conditions of the conditional commitment letter, and shall be the first date release of funds is permitted under the terms of the financial assistance provided.
(9) "Solid waste revolving fund" shall mean the solid waste

revolving fund established by KRS 224A.270.

(10) "Special depreciation fund" shall mean the special depreciation fund required to be established by an applicant by Section 6 of this administrative regulation in connection with a loan from the solid waste revolving fund.

Section 2. General Eligibility Requirements and Conditions to Financial Assistance. Each applicant shall satisfy the following requirements:

(1) The applicant shall retain ownership of the project until the final repayment of any authority loans.

(2) The applicant shall, upon completion of the proposed project, be in compliance with all state or federal laws or regulations with regard to financial accountability, personnel management, and solid waste management activities and shall certify such compliance to the authority.

(3) The applicant shall implement and maintain a system for collection of a service fee, dedicated tax or appropriation, which shall be used to support the funded project.

(4) The applicant shall comply with other conditions to financial assistance that may be included in the assistance agreement or conditional commitment letter.

Section 3. Limitations and Terms. (1) Interest shall be paid at an annual rate equal to the index rate less three (3) percent as shall be established by the authority for a calendar quarter, calculated on the actual funds received by the applicant. The interest rate shall be a fixed rate for the term of the loan.

(2) Interest shall be payable to the authority at such times as shall be established in the assistance agreement.

(3) Loan terms shall match the life of the asset to be financed but shall not exceed thirty (30) years.

Section 4. Financial/Credit Review. (l) Upon receipt of prioritized applications from the cabinet, authority staff shall review applications to determine those projects that are financially feasible and credit worthy for a loan from the solid waste revolving fund in the order as prioritized by the cabinet.

(2) The authority's review shall consider, among other things, the following:

(a) Adequacy and quality of the type of revenues pledged for repayment of the proposed loan, and the operation and maintenance costs of the project.

(b) Validity of the assumptions used to project any revenues to be used to fund the project or the repayment of indebtedness incurred with respect to the project.

(c) Assurance that revenues to be used to fund the project or to repay indebtedness incurred with respect to the project shall be collected.

(d) Security of all other sources proposed to fund the project costs.

(e) Credit history of the applicant and compliance with existing debt covenants.

(f) Reasonableness of projections for operation and maintenance costs of the applicant's solid waste system.

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

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

(i) Any legal restrictions on:

1. The applicant;

2. The ability of the authority to fund the type of project proposed;

3. The applicant's ability to pledge the proposed revenues for repayment of an authority loan; and

4 The operation and maintenance of the project.

(j) If the project is to be operated, maintained or managed by a third party, the review of the audited historical financial information regarding the third party, as well as, financial projections for the project.

(3) Authority staff shall determine which applicants satisfy the above review, and shall make funding recommendations to the authority for all applications within the available funding limits of the solid waste revolving fund.

Section 6. Funding Process. (l) The authority shall consider the recommendations of the authority staff and the cabinet, and shall make the selection of those projects which are to be funded.

(2) For the projects approved, a conditional commitment letter shall be sent to the applicant by the authority stating the type, terms and conditions of the project funding approved.

(3) The applicant shall be granted thirty (30) days to sign and return the conditional commitment letter indicating acceptance of the terms and conditions of the assistance offered, unless an extension for good cause is granted by the authority. Failure to respond shall result in forfeiture of the funds offered, and such funds shall then be made available to other applicants in the order of priority established by the cabinet and recommended by the authority staff.

(4) Upon completion of all conditions of the conditional commitment letter, the applicant shall execute an assistance agreement establishing the terms and conditions of the loan or grant. Execution of the assistance agreement shall generally coincide with award of construction or acquisition contracts for the project. No monies shall be released to the applicant until the assistance agreement has been executed.

(5) Upon determination of the actual bid cost of a project, the funding awarded by the authority may, at staff discretion, without further action of the authority, be increased by up to ten (10) percent of the proposed funding contained in the conditional commitment letter. However, the increase cannot bring the total award above the statutory limits established by KRS 224A.270(3). This action shall be based on project overruns and availability of funds.

(6) Unless otherwise agreed to by the authority staff, funds shall be released to the applicant no more than once each month, for actual project costs incurred. A completed request for payment with adequate supporting documentation shall be submitted to the cabinet for review and approval. The authority shall issue payment based on the written recommendation for payment from the cabinet.

(7) Upon substantial completion of the project and determination of the exact completion costs, a supplemental assistance agreement, including any necessary amendments and adjustment of the funding amounts and a final repayment schedule shall be executed, if any amendments or adjustments are necessary.

(8) To assure adequate funds for major maintenance and replacement of the project funded through the solid waste revolving fund, the applicant shall be required to set aside semiannually from current revenues, into a special depreciation fund, an amount which shall be determined by the authority and set forth in the assistance agreement. Monies may be withdrawn from the fund when major maintenance or replacement of equipment in excess of budgeted amounts is required. Applicants who receive a grant from the authority shall be required to set aside funds for major maintenance and replacement of the project in an amount determined by the authority and set forth in the assistance agreement.

Section 7. Loan Closing and Extensions. (1) An applicant shall meet all conditions for loan closing and take bids for the project within eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan commitment shall expire. One (1) extension of up to six (6) months may be granted upon a determination by the authority staff that circumstances so warrant. If the extension is denied, the loan offer shall be rescinded. If a request

for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded.

(2) The applicant may reapply for any project for which the loan or grant commitment has expired or has been rescinded under this section. Upon reapproval, an applicant shall meet all conditions for loan closing within a time schedule negotiated between the authority and the applicant.

Section 8. Authority to Administer the Program. The authority shall monitor the assistance agreement and require that financial reports be made available to the authority by the applicant at such intervals deemed necessary by the authority. There shall be an annual administrative fee of two-tenths (.2) of one (1) percent charged by the authority on the unpaid balance of all loans.

W. PATRICK MULLOY, II, Chairman

APPROVED BY AGENCY: April 13, 1993

FILED WITH LRC: April 14, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on May 27, 1993, at 10 a.m. EDT in the auditorium, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Kentucky Infrastructure Authority in writing by May 22, 1993, five days prior to the hearing of their interest to attend the hearing. If no notification of intent to attend this hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person that 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 at cost to the requesting party. If you do not wish to attend the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Ms. Eaton-Thomas no later than 4:30 p.m. on May 27, 1993. The Kentucky Infrastructure Authority does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request the authority provides reasonable accommodation to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Ms. Eaton-Thomas no later than May 22, 1993. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Marilyn Eaton-Thomas, Kentucky Infrastructure Authority, 702 Capitol Avenue, Suite 075, Capitol Annex, Frankfort, Kentucky 40601-3453, (502) 564-2090.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Marilyn Eaton-Thomas

(1) Type and number of entities affected: The proposed regulation establishes definitions, eligibility requirements, application requirements, and prioritization criteria to be used by the Kentucky Infrastructure Authority in fulfilling its role in administration of the solid waste revolving fund loan program.

(a) Direct and indirect costs or savings to those affected: Local governments meeting eligibility criteria will be able to submit applications to fund projects with low interest loans from the solid waste revolving fund. The Natural Resources Cabinet will prioritize the projects, pursuant to 401 KAR 49:210 and make recommendations to the Kentucky Infrastructure Authority who will analyze the application pursuant to this regulation. Approximately $15,000,000 is currently available.

1. First year: There will be some costs incurred in preparing the applications to take advantage of the low interest loans.

2. Continuing costs or savings: Loan repayment will not exceed 30 years.

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: Recipients of a loan from the fund will be required to submit annual audits to the authority.

(2) Effects on the promulgating administrative body: There will be additional costs imposed on the Kentucky Infrastructure Authority (KIA). These costs include additional direct and indirect expenses for providing resources to review loan applications and administer approved loans through project completion and loan repayment. However, these expenses are recouped through fee assessed.

(a) Direct and indirect costs or savings:

1. First year: KIA costs will depend on the number of applications received and the complexity of the projects.

2. Continuing costs or savings: KIA costs are anticipated to continue for as long as the solid waste revolving fund is budgeted.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: KIA will review applications and make recommendations to the Kentucky Infrastructure Authority Board. There will be paperwork associated with each of these duties as well as with following the projects through completion and project closeout.

(3) Assessment of anticipated effect on state and local revenues: Local governing bodies will be required to repay loans with loan revenues at low interest rates.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the provisions of state law, there were no alternative means of implementing the solid waste revolving fund loan program than the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There is no statute or administrative regulation which conflicts, duplicates, or overlaps with this proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or policy in conflict with this proposed administrative regulation.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: There is no statute, administrative regulation, or policy in conflict with this proposed administrative regulation.

(6) Any additional information or comments: The purpose of this proposed administrative regulation is to establish criteria for financial analysis of applications for loan assistance from the solid waste revolving fund.

TIERING: This regulation has been narrowly drafted to apply only to local governmental agencies who will be applying for funding through the solid waste revolving fund.

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. Cities, counties, and urban-county governments with approved solid waste management plans are eligible for loans from the solid waste revolving fund.

3. State the aspect or service of local government to which this administrative regulation relates. Cities, counties, and urban-county governments with approved solid waste management plans who apply for financial assistance from the solid waste revolving fund.

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 (+/-): This proposed administrative regulation will enable the distribution of loan monies to be used by local governments who are interested in pursuing solid waste management projects. However, revenues would be impacted to the extent they are pledged for the local governmental agency's repayment to the Kentucky Infrastructure Authority.

Expenditures (+/-): The cost of preparing an application for loan assistance from the solid waste revolving fund should be minimal and should not outweigh the benefit of receiving funds to assist with local responsibilities for solid waste management.

Other Explanation: This proposed administrative regulation will provide additional resources for cities, counties, and urban-county governments to assist with their responsibilities for solid waste management.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:171. Deer hunting seasons.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.175

NECESSITY AND FUNCTION: This administrative regulation pertains to deer hunting in specified counties and on wildlife management areas (WMAs). This administrative regulation is necessary to set deer hunting season dates, to specify the counties and management areas open to deer hunting and to prescribe the methods by which deer may be legally taken. The function of this administrative regulation is to provide for the prudent taking of deer within reasonable limits, and to insure a permanent and continuing supply of deer for present and future residents of the state. This administrative regulation is necessary to adjust for zones, dates, weapons, and limits in the deer seasons.

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

(1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Antlered deer" means any deer that has one (1) antler at least four (4) inches in length, measured from the skin to the tip of the antler.

(3) "Antlerless deer" means does and any buck that has both antlers less than four (4) inches long, measured from the skin to the tips of the antlers.

(4) "Archery equipment" means long bows, recurve bows and compound bows incapable of holding an arrow at full or partial draw without aid from the archer.

(5) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(6) "Breech-loading or modern gun" means any rifle, handgun or shotgun in which the cartridge or shotshell is placed into the gun at the rear of the barrel.

(7) "Center-fire" means a cartridge that fires by the firing pin striking a primer in the center of the end of the cartridge case.

(8) "Crossbow equipment" means any device designed to hold an arrow (or bolt) at full or partial draw without aid from the archer.

(9) "Deer control tags" means those tags issued by the department to landowners for distribution to licensed or license exempt deer hunters during the season and used in the control of deer causing damage to private property or farm crops.

(10) "Firearms" means all breech and muzzle-loading rifles, shotguns and handguns.

(11) "Muzzle-loading gun" means any rifle, shotgun or handgun in which the bullet or projectile, is placed in the gun from the discharging end of the barrel.

(12) "Private inholdings" means any privately-owned properties completely surrounded by wildlife management area lands controlled by the Department of Fish and Wildlife Resources.

(13) "Shotshell" means multiple-projectile or pelleted ammunition.

(14) "Slug" means single-projectile ammunition.

(15) "WMA tags" means those permits issued by the department to hunters to tag deer taken during WMA hunts.

Section 2. County Zone Assignments. The following counties are open to deer hunting during the periods specified in Section 5 of this administrative regulation. County zone assignments shall apply to the entire deer hunting season.

(1) Zone No. 1: Crittenden, Hancock, Jefferson, Livingston, and Oldham.

(2) Zone No. 2: Boone, Gallatin, Hopkins, Muhlenberg, Nelson, Ohio, and Webster.

(3) Zone No. 3: Allen, Anderson, Ballard, Boyle, Bracken, Breckinridge, Bullitt, Campbell, Carroll, Christian, Fulton, Grant, Graves, Grayson, Hardin, Henderson, Kenton, Logan, Lyon, Marion, Meade, Shelby, Todd, Trigg, Trimble, and Woodford.

(4) Zone No. 4: Adair, Barren, Butler, Caldwell, Calloway, Carlisle, Casey, Cumberland, Daviess, Franklin, Green, Harrison, Henry, Hickman, Larue, McCracken, McLean, Mercer, Monroe, Owen, Pendleton, Robertson, Scott, Simpson, Spencer, Taylor, Union, Warren, and Washington.

(5) Zone No. 5: Boyd, Carter, Clinton, Edmonson, Elliott, Greenup, Hart, Lawrence, Marshall, Mason, Metcalfe and Nicholas.

(6) Zone No. 6: Bath, Clark, Fleming, Garrard, Lewis, Lincoln, Madison, Martin, McCreary, Menifee, Morgan, Pulaski, Rowan, Russell, Wayne, and Whitley.

(7) Zone No. 7: Bell, Bourbon, Breathitt, Clay, Estill, Fayette, Floyd, Harlan, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lee, Leslie, Letcher, Magoffin, Montgomery, Owsley, Perry, Powell, Rockcastle, and Wolfe.

Section 3. Counties and Areas Closed to Deer Hunting. (1) Counties: Pike.

(2) Wildlife management areas: Daviess County Gun Club in Daviess County, Fishtrap WMA in Pike County, Robinson Forest WMA in Breathitt, Perry, and Knott counties, and Swan Lake WMA in Ballard County.

(3) Deer hunting shall be prohibited within the boundaries of all national parks.

Section 4. Deer Hunting Dates and Tag Restrictions. (1) Archery and crossbow dates and restrictions.

(a) Archery equipment shall be used for deer hunting October 1 through January 15, except during modern gun, muzzle-loading gun or crossbow season when archery equipment may be used. Crossbow equipment may be used the fourth Tuesday in November for ten (10) consecutive days, and during periods open to muzzle-loading gun or modern gun use only. Except as specified in paragraph (b) of this subsection, in Zones 1-6, the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer only. In Zone 7, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(b) Persons using archery or crossbow equipment during periods when modern guns are also permitted for deer hunting shall abide by the tag restrictions for modern gun season in effect for that period. Likewise, persons using archery or crossbow equipment during periods when muzzle-loading guns are also permitted for deer shall abide by the tag restrictions for muzzle-loading gun seasons in effect for that period.

(2) Muzzle-loading gun dates and restrictions.

(a) Muzzle-loading guns may be used for deer hunting the third Saturday in October for two (2) consecutive days and the second

Saturday in December for seven (7) consecutive days. During these periods, in Zones 1-5 the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer only. In Zones 6-7, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid during these periods.

(b) Persons using muzzle-loading guns during the period when modern guns may also be used for deer hunting shall abide by the tag restrictions for modern gun season in effect for that period.

(3) Modern gun dates and restrictions.

(a) Modern guns specified in Section 5 of this administrative regulation may be used for deer hunting the second Saturday in November for ten (10) consecutive days, except in Zone 7 as specified below. This shall be the only period when modern guns shall be permitted for deer, except as permitted during muzzle-loader or modern gun quota hunts on wildlife management areas as specified in Section 9 of this administrative regulation.

(b) In Zone 1 the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer during the entire ten (10) day period.

(c) In Zone 2, during the first five (5) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer. During the last five (5) days, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(d) In Zone 3, during the first two (2) days the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer. During the last eight (8) days, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid.

(e) In Zone 4, during the first nine (9) days the white tag shall be valid for antlered deer only, and the yellow tag shall be invalid. The last day the white tag shall be valid for any deer and the yellow tag shall be valid for antlerless deer.

(f) In Zones 5 and 6, the white tag shall be valid for antlered deer only and the yellow tag shall be invalid for the entire ten (10) day period.

(g) In Zone 7, the white tag shall be valid only for the first five (5) days and only for antlered deer. The yellow tag shall be invalid during this period.

(h) During this ten (10) day period, any legal deer hunting equipment may be used, including archery, crossbow, muzzle-loading and modern guns, and all hunters shall abide by the tag and other restrictions for modern gun hunting. Persons using archery or crossbow equipment during the last five (5) days of this ten (10) day period in Zone 7 shall abide by tag restrictions for archery hunting specified in Section 4(1)(a) of this administrative regulation.

Section 5. Equipment Requirements and Restrictions. (1) Only the following gun and archery equipment used as described shall be permitted for taking deer during the periods specified in Section 4 of this administrative regulation:

(a) Breech-loading or modern guns: centerfire rifles and handguns; shotguns up to ten (10) gauge maximum used with slug ammunition only. Muzzle-loading guns: rifles .40 caliber or larger and handguns .44 caliber or larger; shotguns up to ten (10) gauge maximum used with slug ammunition only.

(b) Archery: compound bows, longbows, recurve bows and crossbows may be used. Arrows or crossbow bolts shall not be fitted with barbed broadhead points. Broadhead points shall be at least seven-eights (7/8) inch wide. Crossbows shall have a working safety device.

(2) The following gun and archery equipment and ammunition shall be prohibited for taking deer:

(a) Equipment: any fully automatic firearm, or firearm capable of firing more than one (1) round with one (1) trigger pull; semiautomatic and pump rifles or shotguns with a magazine capacity exceeding ten (10) rounds; longbows, recurve and compound bows fitted with any device capable of holding an arrow at full or partial draw without aid of the hunter; and chemically treated arrows, bolts or broadheads, or any type of chemical attachment.

(b) Ammunition: any caliber or cartridge that does not meet the requirements stated in this section, any fully jacketed ammunition, tracer bullet ammunition or any type of shotshell.

Section 6. License and Permit Requirements, Hunting Method Exemptions and Bag Limit. (1) License requirements:

(a) All resident and nonresident deer hunters except those exempted by KRS 150.170 shall possess a valid annual hunting license and deer permit. A temporary five (5) day hunting license shall not be used in conjunction with the deer permit. Deer permits shall be signed by the holder before hunting.

(b) Persons age sixteen (16) and above required to possess a hunting license and deer permit shall use only one (1) two (2) tag deer permit per license year. Persons who are in possession of a valid junior hunting license may use a maximum of two (2) individual junior deer hunting permits or one (1) two (2) tag permit. The tag accompanying a junior deer hunting permit shall be used as either the yellow or white tag according to the tag restrictions of the season in the zone where it is used. Persons losing their deer permit may purchase another one after having filed an affidavit with the licensing agent stating the fact of loss. Use of any portion of the deer permit by someone other than the person whose name is signed on the permit shall not be permitted, except as specified in administrative regulation 301 KAR 2:211.

(2) Hunting methods exemptions for handicapped hunters. Persons with physical handicaps that make it impossible for them to hunt by conventional methods may apply by letter to the commissioner of the department for a hunting methods exemption. The application letter shall be accompanied by a physician's statement that the applicant is handicapped to such a degree that the exemption is necessary in order for the applicant to hunt. The commissioner may authorize any reasonable exception that would permit a handicapped person to hunt when he could not otherwise do so because of his handicap. Specific exemptions to be allowed shall be described in the letter of authorization and shall be retained in the possession of the applicant while hunting. Hunting methods exemptions shall expire at the end of the license year.

(3) Season limit: an individual may take a maximum of two (2) deer per license year, only one (1) of which may be antlered, with the following exceptions only:

(a) Hunters who are drawn for a quota hunt and/or issued a WMA tag may take deer in addition to the limit; and

(b) Hunters using deer control tags issued to landowners for taking antlerless deer may take a maximum of two (2) antlerless deer in addition to the statewide limit and only as specified in administrative regulation 301 KAR 2:211.

Section 7. Hunter Requirements, Shooting Hours, and Taking of Other Species. (1) Persons under sixteen (16) shall not hunt deer with a gun unless they are accompanied by an adult who shall be able to take immediate control of the juvenile's gun at all times while the juvenile is hunting.

(2) Hunters may be in the woods or stands before daylight, but shall not take, or attempt to take deer except during daylight hours.

(3) Coyotes and wild hogs may be taken during deer season by legal deer hunters only. Wild hogs shall be checked in at an official check station.

(4) Deer shall not be taken with the aid of dogs, or any domestic animal, or from any type of vehicle or boat.

(5) A deer shall not be taken while the deer is swimming.

(6) Any person possessing a deer shall leave the head attached to the body until the deer has been officially checked, as specified in Section 8 of this administrative regulation.

(7) Hunter orange garments shall be worn by all deer hunters while hunting on any location or property where any deer gun season is permitted by administrative regulation. Garments shall be worn as

outer coverings on at least the head, chest and back. They shall be of a solid, unbroken pattern. Any mesh weave opening shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color. Camouflage pattern hunter orange garments do not meet these requirements.

(8) On department-controlled wildlife management areas, Westvaco Public Hunting Areas, the Daniel Boone National Forest, Reelfoot National Wildlife Refuge and the Big South Fork National Recreation Area, the use of any nails, spikes, screw-in device, wire or tree climbers shall be prohibited for attaching tree stands or climbing trees. Only portable stands and climbing devices that do not injure trees shall be permitted. Portable stands shall not be placed in trees more than two (2) weeks before opening day of each hunting period and shall be removed within one (1) week following the last day of each hunting period. All portable stands shall be plainly marked with the owner's name and address. Existing permanent tree stands shall not be used.

Section 8. Deer Tagging and Checking Procedures, Transportation and Processing Requirements. All deer taken in Kentucky shall be tagged and officially checked as specified below:

(1) Tagging.

(a) Before moving the deer carcass, the hunter shall attach a valid, adhesive-backed portion of the deer permit, deer control tag or WMA tag to the carcass. This tag shall be attached so that it cannot be removed without destroying the tag or mutilating the carcass. Tags shall remain attached to the carcass until processed.

(b) Following the same requirements stated above in paragraph (1) of this subsection, hunters not required to possess a deer permit shall identify their harvested deer by providing their own cards or tags to attach to the deer carcass. Hunters shall write "White Tag" and "Yellow Tag" on two (2) separate cards along with their name and address. After a deer is taken, the hunter shall fill in on the card(s) the date and location (county) where the deer was taken, and attach the appropriate card to the deer before moving the carcass. These two (2) cards shall be used according to the zone and tag restrictions specified in Section 4 of this administrative regulation, in lieu of the deer tag.

(c) Deer taken in Kentucky shall not be transported outside state boundaries until officially checked. Proof of legal harvest shall accompany any deer, or parts of deer transported into Kentucky.

(d) Any deer entered in trophy deer listings for Kentucky shall be legally harvested within state boundaries.

(e) Deer hides may be sold to licensed fur buyers and licensed fur processors.

(f) All individuals, lockers and plants that process deer shall keep accurate records that include the hunter's name, address and date received for each deer in their possession. Each deer shall also bear a tag provided by the operator/processor stating the above information until the deer is processed. Processors shall not accept deer carcasses without proper owner identification as described.

(2) Checking deer.

(a) All harvested deer shall be officially checked by 9 a.m. on the day after the deer is taken. The entire, or field-dressed carcass shall be taken to the nearest open check station. Check station operators, state conservation officers, or other authorized employees of the department may officially check deer.

(b) Deer shall be checked in by the person who harvested the deer.

(c) Hunters shall fill out, or provide the information required to check station operators to complete an official game check card for each harvested deer. The completed game check card shall be submitted to the check station operator, officer or authorized employee. The hunter's copy of the game check card shall be kept in the hunter's possession until the deer is processed. Parts of deer separated for mounting shall bear the completed taxidermy portion of the hunter's copy of the game check card.

Section 9. Exceptions to Deer Hunting Administrative Regulations for Wildlife Management Areas. All administrative regulations in effect for deer hunting shall apply to wildlife management areas (WMAs), unless otherwise noted in this section. WMAs listed in this section have specific season dates or other additional requirements for deer hunting. When specific periods or season dates are listed for a WMA, deer hunting shall be permitted only on those dates and hunters shall only use the equipment specified. Periods open for the use of muzzle-loading guns for deer shall not be in effect on the WMAs listed in this section, unless otherwise noted. On WMAs where a quota hunt is scheduled, no other gun deer hunting shall be permitted, unless otherwise noted in the individual area listing.

(1) Limits: an individual shall take no more than one (1) deer from each of the areas listed in this section, except that two (2) may be taken, as specified from West Kentucky and Higginson-Henry WMAs.

(2) Quota hunt requirements, restrictions and application procedures.

(a) Advance application is required for all quota hunts. Applications shall be made only on forms provided by the department and shall include the Social Security number of the applicant and a three (3) dollar nonrefundable application fee per applicant. Only one (1) hunter shall apply per form and a maximum of four (4) hunters may apply as a party. Hunters sixteen (16) years old and older may apply to only one (1) quota hunt. Hunters at least ten (10) years old, but not yet sixteen (16) by the scheduled hunt date may apply for only one (1) quota hunt and one (1) youth hunt in addition to the Ballard WMA youth hunt. Multiple applications to one (1) area or failure to meet any of the application requirements described above shall result in disqualification of the applicant. Completed applications shall be stamped, self-addressed and postmarked no later than August 31 unless another date is announced by the commissioner. The application deadline shall be extended by the commissioner availability of forms is delayed.

(b) Only quota hunt applicants who are drawn and issued a permit shall hunt on quota hunt dates. Quota hunters shall hunt only on the dates assigned and in the areas assigned.

(c) During all quota hunts, only persons possessing a valid quota hunt permit shall be permitted to enter a WMA, except to use established public roads, or other areas designated open by signs. Owners of private inholdings or their guests may travel within the owner's lands, but shall not enter the WMA except as described above.

(d) During a quota hunt or firearm hunt, any legal deer hunting equipment may be used. Hunts listed as archery hunts are restricted to legal archery equipment only. All quota hunters shall check in before and check out at the completion of the hunt.

(e) On the following WMAs, all deer hunters shall check in and check out for all hunts: Clay, Central Kentucky, Dewey Lake, Grayson Lake, Higginson-Henry, Kleber, Paintsville Lake, Pennyrile Forest, Redbird, Tradewater, West Kentucky, Yatesville, Yellowbank WMAs, and for the Barren River Lake WMA youth hunt.

(f) Hunters shall present the signature portion of a valid deer permit, a valid quota hunt permit, show proof of identity and Social Security number when checking in for a quota hunt. No one can substitute for the person whose name appears on the quota hunt permit.

(g) Participants in all quota hunts shall comply with the hunter orange clothing requirements as specified in Section 7(7) of this administrative regulation. When deer hunting on a WMA during periods when only archery equipment is permitted for taking deer on the WMA, the hunter orange clothing requirement shall not apply.

(h) Deer taken during quota hunts shall not count as part of the season limit. Hunters shall use WMA tags, provided by the department, for tagging deer harvested during a quota hunt. WMA tags shall be valid only during the dates and on the WMA for which the tag was issued. Hunters shall take only the type of deer indicated on the WMA tag, if specified.

(i) Owners of private inholdings or their guests may hunt on the owner's lands without following the application procedure specified in Section 9(2)(a), (b) and (c) of this administrative regulation, but shall follow all other quota hunt requirements. Private inholdings shall only be open during the periods listed for the WMA in which they lie, and hunters shall follow all administrative regulations in effect during those periods.

(j) Participants in quota youth hunts shall comply with all hunter education requirements as specified in administrative regulation 301 KAR 2:185 and shall present a valid hunter education course completion card when checking in on the day of the hunt.

(k) Individuals drawn for a quota hunt on Ballard, Dewey Lake, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not be eligible to apply to the same area quota hunt for the next three (3) seasons.

(3) Ballard WMA in Ballard County (except that portion south of Terrell Landing Road) quota youth hunt for deer as specified on permit, fourth Saturday in October for two (2) consecutive days and the fifth Saturday in October for (2) consecutive days.

(4) Barren River WMA in Allen and Barren counties.

(a) Quota youth hunt: any deer, second Saturday in October for two (2) consecutive days.

(b) Modern gun, archery and muzzle-loading gun hunting shall conform to statewide administrative regulations.

(5) Beaver Creek WMA in McCreary and Pulaski counties, and Mill Creek WMA in Jackson County.

(a) Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November and the Monday following the quota hunt through December 31.

(b) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(6) Cane Creek WMA in Laurel County.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, second Saturday in November.

(7) Central Kentucky WMA in Madison County.

(a) Archery hunt: any deer, December 18 through January 15.

(b) No gun deer hunting allowed.

(8) Clay WMA in Nicholas County. Archery hunt: antlered deer only, October 15 through the Friday preceding the second Saturday in November.

(9) Dewey Lake WMA in Floyd County.

(a) Archery hunt: antlered deer only, October 1 through October 14, November 1 through 5, November 8 through 12, November 18 through December 3, and December 6 through 31; any deer, October 15 through October 31.

(b) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(c) Youth quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(10) Grayson Lake WMA in Carter and Elliott counties.

(a) Youth quota hunt: any deer, first Saturday in November for two (2) consecutive days and the first Saturday in December for two (2) consecutive days. Only on that portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek Fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. This is the only firearm deer hunting permitted on the area.

(b) Archery and crossbow hunt: any deer, except on the portion west of Route 1496, and east of the line delineated by the following: Bruin Creek, the Bruin Creek Fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork. October 1 through December 31.

(11) Higginson-Henry WMA in Union County.

(a) Quota hunt for deer as specified on permit, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: only antlerless deer may be taken during the period October 1 through 15. Any deer may be taken with the white tag, or an antlerless deer may be taken with the yellow tag during the period October 16 through December 31.

(12) Kleber WMA in Owen and Franklin Counties.

(a) Quota hunt: any deer, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: any deer, third Saturday in October through December 31.

(13) Lapland WMA in Meade County.

(a) Quota hunt: any deer, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: any deer, October 1 through December 31.

(14) Paintsville Lake WMA in Morgan and Johnson Counties.

(a) Quota hunt: antlered deer only, first Saturday in December for two (2) consecutive days.

(b) Archery hunt: antlered deer only, October 1 through November 12, November 23 through December 3 and December 6 through 31.

(15) Pennyrile WMA in Caldwell, Christian, and Hopkins Counties, and Tradewater WMA in Hopkins County.

(a) Quota hunt: antlered deer only, the first Saturday in December for two (2) consecutive days.

(b) Limits: one (1) antlered deer only.

(c) Archery hunting: conforms to statewide administrative regulations except that only antlered deer shall be taken.

(16) Pioneer Weapons WMA in Bath and Menifee Counties.

(a) Legal muzzle-loading gun only; crossbows may be used during the entire archery season.

(b) Muzzle-loading gun hunting shall conform to statewide administrative regulations.

(17) Redbird WMA in Clay and Leslie Counties.

(a) Archery hunt: antlered deer only, October 1 through the Friday preceding the second Saturday in November and the Monday following the first Sunday in December through December 31.

(b) Gun hunt: antlered deer only, two (2) consecutive days beginning the second Saturday in November.

(18) Taylorsville Lake WMA in Anderson and Spencer Counties.

(a) Archery hunt: any deer, October 1 through December 31.

(b) Quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(19) West Kentucky WMA in McCracken County.

(a) Archery hunts: any deer, October 1 through 28, November 18, November 22 through 25, December 6 through 9 and December 13 through January 15 on all tracts except posted zones.

(b) Posted zones: designated posted zones shall be opened to archery hunts on December 13 through January 15.

(c) Quota hunt 1: any deer, third Saturday in November for two (2) consecutive days.

(d) Quota hunt 2: any deer, second Saturday in December for two (2) consecutive days.

(e) Youth quota hunt: any deer, last Saturday in October for two (2) consecutive days.

(f) All gun hunters are limited to muzzle or breech-loading shotguns only.

(g) No firearms permitted on any posted zone at any time.

(h) Crossbow hunt: beginning November 1 and continuing for fourteen (14) consecutive days.

(i) Limits: two (2) deer, one (1) of which shall be antlerless and tagged with the yellow or white tag, the other deer may be antlered or antlerless and tagged with a WMA tag issued on the area. Only one (1) WMA tag shall be issued to an individual. A bowhunter who has taken a deer on this WMA with a WMA tag shall not hunt in the quota hunt.

(20) White City WMA in Hopkins County.

(a) Archery hunt: October 1 through December 31.

(b) Quota hunt 1: the second Saturday in November through the following Wednesday.

(c) Quota hunt 2: the Thursday following the second Saturday in

November through the following Monday.

(d) Limit: one (1) deer.

(21) Yellowbank WMA in Breckinridge County.

(a) Quota hunt: any deer, first Saturday in November for two (2) consecutive days.

(b) Archery hunt: antlered deer only October 1 through 14 and any deer, October 15 through December 31.

Section 10. 301 KAR 2:170 is hereby repealed.

DON R. McCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: March 1, 1993

FILED WITH LRC: April 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1993 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don McCormick

(1) Type and number of entities affected: An estimated 211,000 persons will participate in the white-tailed deer hunting proposed by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: These costs involve the purchase of a state hunting license and a deer permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) and a deer permit ($21.50) unless exempt by administrative regulations.

2. Continuing costs or savings: Same a first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Deer hunters will be asked to check their deer at a county deer check station and fill out a game check card denoting specific information about the deer.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this administrative regulation is $1,000,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 211,000 deer hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $25 per day of hunting according to the 1980 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that white-tailed deer populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

6) Any additional information or comments: None

TIERING: Was tiering applied: Yes Special seasons, limits and hunting procedures are recognized for various zones and land holdings based on deer availability and other user considerations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks office serves as a distribution system for the hunting licenses required by this administrative regulation. The District Courts are where violators of these administrative regulations are prosecuted.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in sale of hunting licenses and deer tags. This office receives a $.50/license fee for selling the licenses. The District Courts are utilized for prosecution of cases made against violators of these administrative regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:211. Deer control tags.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.340, 150.360, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.175

NECESSITY AND FUNCTION: This administrative regulation pertains to the taking of antlerless deer during deer seasons where established county deer hunting seasons are inadequate to control localized agricultural damage caused by deer. Its purpose is to provide a means of alleviating localized agricultural damage until such time as it is appropriate to apply deer herd stabilization or reduction measures on a countywide basis. The function of this administrative regulation is to prescribe the conditions and procedures under which antlerless deer may be taken for this purpose. This administrative regulation is necessary to clarify the change in terms from antlerless deer permits to deer control tags.

Section 1. Deer Control Tag Application, Issuance and Validity.

(1) Landowners or their agents may apply for deer control tags by contacting a conservation officer and having a crop damage assessment form completed.

(2) Applications for tags to be issued in the current year shall be submitted no later than September 30. Applications submitted after September 30 shall be considered for the following year and permits shall not be issued until the following year.

(3) The conservation officer shall forward completed damage assessment forms to the Division of Wildlife for consideration.

(4) The Division of Wildlife shall determine the number of permits to be issued for any one (1) landholding through consideration of the extent of damage, the size of the landholding, the number of deer necessary to be removed to alleviate further damage, the conservation officer's recommendation, and the adequacy of the county deer season to address the problem. Tags shall not be issued in instances where the county deer season is adequate to achieve the desired reduction in deer numbers or where crop or environmental damage is not present.

(5) Tags shall be issued only to a landowner or his agent.

(6) Landowners or their agents may transfer the tags they have been issued to licensed or license exempt deer hunters of their choice.

(7) Tags shall be valid for use only on the landholding for which they were issued.

(8) Tags shall be valid only during the license year for which they were issued and may be used during archery, gun or muzzle-loader season according to equipment restrictions in effect at that time. Deer control tags used in this manner allow the taking of these antlerless deer at any time during the entire season.

Section 2. Requirements for Landowners or Their Agents to Whom Deer Control Tags Have Been Issued. (1) Landowners or their agents shall have the hunter sign the tag prior to transferring the permit to a hunter. Unsigned deer control tags shall be invalid.

(2) Landowners or their agents shall return all unissued tags to the Division of Wildlife within ten (10) days of the close of the deer season.

(3) Failure to comply with the requirements of this section, conviction for a deer regulation violation, or other abuse of the deer control tag program shall be grounds for permit revocation and future ineligibility.

(4) Appeals of a revocation or a denial of eligibility shall be submitted in writing to the commissioner of the department within sixty (60) days of any such action. The commissioner's decision may be appealed to the commission in writing within sixty (60) days of the adverse decision of the commissioner and the appeal be heard at the next regularly scheduled commission meeting.

Section 3. Requirements for Using Deer Control Tags. Hunters shall comply with all current deer season regulations, including the deer bag and possession limit, except that two (2) antlerless deer per hunter may be taken with two (2) deer control tags in addition to the statewide limit.

Section 4. 301 KAR 2:210 is hereby repealed.

DON R. McCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: March 1, 1993

FILED WITH LRC: April 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 26, 1993 at 1 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: An estimated 211,000 persons will participate in the white-tailed deer hunting proposed by this administrative regulation. An estimated 94,000 landowners actively engaged in farming may also be affected.

(a) Direct and indirect costs or savings to those affected: These costs involve the purchase of a state hunting license and a deer permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this administrative regulation would be required to possess a valid hunting license ($12.50 for residents) and a deer permit ($21.50) unless exempt by administrative regulations.

2. Continuing costs or savings: Same a first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Deer hunters will be asked to check their deer at a county deer check station and fill out a game check card denoting specific information about the deer.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this administrative regulation is $500,000.00

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 211,000 deer hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $25 per day of hunting according to the 1980 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that white-tailed deer populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict: Not Applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not Applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied: Yes. Special seasons, limits and procedures are recognized for various federal installations based on deer and other use considerations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks office serves as a distribution system for the hunting licenses required by this administrative regulation. The District Courts are where violators of these administrative regulations are prosecuted.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in the sale of hunting licenses and deer tags. This office receives a $.75 fee for selling licenses and deer tags. The District Courts are utilized for prosecution of cases made against violators of these administrative regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET
Department Of Fish And Wildlife Resources

301 KAR 4:100. Peabody Wildlife Management Area use requirements and restrictions.

RELATES TO: KRS 150.170, 150.175, 150.250, 150.620, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175, 150.240, 150.370

NECESSITY AND FUNCTION: This administrative regulation is necessary to provide for the protection, conservation and orderly use and management of the lands and wildlife associated with the Peabody Coal Company Wildlife Management Area. Its function is to detail requirements and restrictions for permit issuing agents and users of the Peabody Coal Company Wildlife Management Area.

Section 1. User Permit Required. Except as provided in Sections 2 and 3 of this administrative regulation, a nontransferable user permit shall be in the possession of all persons sixteen (16) years of age or older who utilize the area for any purpose. Hunters and fishers utilizing lands within the area shall also possess valid hunting or fishing licenses and any other applicable tags or permits.

Section 2. Event Permit. In lieu of individual user permits, a representative individual of any group, family or organization using the area may have in possession an event permit which shall be valid for that group, family or organization. An event permit may be issued to a group, family or organization utilizing the area for any purpose not excepted in Section 3 of this administrative regulation. An event permit shall:

(1) Specify its period of validity, not to exceed four (4) days;

(2) Specify the activity or activities permitted to be undertaken by the group, family or organization in whose name it is issued; and

(3) Specify the name of the permitted group, family or organization and contain the name and address of a single individual representing the group, family or organization.

Section 3. User Permit Exceptions. (1) No persons under employment, acting as an agent of or under contract to Peabody Coal Company, Beaver Dam Coal Company, Peabody Holding Company or the Kentucky Department of Fish and Wildlife Resources, who, while performing official duties as an employee, agent or contractor of those companies or the department, shall be required to have an area use permit of any kind.

(2) No persons enroute through the area on state or county owned roads shall be required to have an area use permit.

(3) No persons who are on the area for reasons of employment or in the protection of public safety or well-being shall be required to have an area use permit.

Section 4. Applications, Applicant Information Requirements, Fees, Issuance Requirements, Permit Duration, Rejection, Revocation, Recordkeeping Requirements and Permit Replacement or Refund. (1) Applications. Available by contacting: Division of Fiscal Control, Kentucky Department of Fish and Wildlife Resources, Fiscal Control Division, #1 Game Farm Road, Frankfort, KY 40601 or from other vendors as designated by the department according to provisions described in Section 6 of this administrative regulation. Application shall be only on the form and according to the instructions provided. The application form is hereby incorporated by reference. Applications shall be available to the public, including inspection and copying, directly from the Division of Fiscal Control between the hours of 8 a.m. and 4:30 p.m. EST on Monday through Friday, except holidays. The effective date of this form shall be April, 1993.

(2) Applicant information requirements. No person shall knowingly provide false information when applying for a permit.

(3) Fees. Individual permits shall cost ten (10) dollars and event permits shall cost twenty-five (25) dollars. Mail-in applications shall be accompanied by a certified check or money order in the correct amount.

(4) Issuance requirements. Permits shall only be issued from fully completed applications, less optional entries as indicated on the form. Incomplete applications shall be returned to the applicant. Applicants shall allow ten (10) working days from the time of application until the receipt of the permit when applying by mail. Those applying in person shall be subject to the same issuance requirements except they shall receive the permit upon its completion.

(5) Permit duration. Permits issued to individuals prior to the end of February 1995 shall be valid until the end of February, 1995. All other Peabody Coal Company Wildlife Management Area permits shall be valid from March 1 through the end of February of each year.

(6) Rejection. No permits of any kind shall be issued for activities deemed by the commissioner as being inappropriate to or incompatible with the statutory purpose and policy of the department.

(7) Recordkeeping requirements. The department shall keep all applications, waivers of liability and copies of permits issued in a retrievable form. Records shall be retained for a minimum of one (1) year after the permits expire.

(8) Permit replacement or refund.

(a) Replacement shall be allowed only for lost permits. Those who lose their permits may make a written request to the Department of Fish & Wildlife, #1 Game Farm Rd., Frankfort, KY 40601 for a duplicate. After the purchase of a permit is verified the department shall issue a duplicate. The cost of a duplicate permit shall be four (4) dollars.

(b) Refunds shall be allowed only when the permittee has purchased multiple permits that are valid for the same period of time. Anyone purchasing multiple permits and desiring a refund shall make a written request and provide the actual permit for which a refund is sought. After verifying that a valid permit exists in addition to the one for which a refund is requested, the department shall issue a refund.

Section 5. Prohibited Activities. No permitted or unpermitted persons, groups, families or organizations shall:

(1) Swim for recreational purposes in any body of water on the area;

(2) Camp anywhere on the area except in a primitive fashion

along existing roads;

(3) Ignite, create or maintain an open campfire anywhere on the area;

(4) Operate off-road, all terrain, recreational or other motorized vehicles off of existing roads or beyond where signs indicating "No Vehicles Beyond This Point" or others with similar meaning, have been placed;

(5) Park vehicles in such a manner as to block any roads, gates or other thoroughfares;

(6) Utilize other than designated parking areas unless none are available;

(7) Target shoot anywhere other than at designated target shooting areas;

(8) Construct permanent, semipermanent or any other structures or stands other than temporary blinds for waterfowl hunting, which shall be removed daily;

(9) Operate boats with a centerline exceeding eighteen (18) feet six (6) inches in length as measured on deck or from bow to stern on any lake, pond or other water body. This restriction shall not apply to canoes which have no length limit and float boats which shall have pontoons and decking no longer than twenty-two (22) feet; or

(10) Operate boat motors, except electric trolling motors, on any lake, pond or water body at any speed other than idle speed.

Section 6. Special Use Restrictions. Persons fishing on Goose Lake on Sinclair Mine or Island Lake or South Lake on Homestead Mine shall:

(1) Abide by the following limits:

Species	Creel Limit	Size Limit
Largemouth bass	1	20"
Bluegill	15	None
Redbreast sunfish	15	None
Channel catfish	2	15"
Walleye/hybrids	1	15"
Crappie	10	None

(2) Fish only during the period July 1 through October 15 annually;

(3) Fish only during daylight hours;

(4) Utilize only electric motors on boats; and

(5) Not take frogs by shooting, gigging or by any other means.

Section 7. Permit Issuing Agent Qualifications, Issuing Fees, Issuance Requirements, and Reporting Requirements. (1) Permit issuing agent qualifications. Issuing agents shall be county clerks or businesses located in Hopkins, McLean, Butler, Daviess, Muhlenburg or Ohio counties. In order to be an issuing agent, they shall meet the following criteria:

(a) County clerks shall complete an issuing agent agreement, which is hereby incorporated by reference. Agreements shall be available, including for inspection and copying, by mail or in person by contacting: Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, KY 40601 between the hours of 8 a.m. and 4:30 p.m. EST on Monday through Friday, except holidays. The effective date of the issuing agent application form shall be April, 1993.

(b) Businesses shall be customarily open at least fifty-six (56) hours per week, year round.

(c) Businesses shall complete a standard issuing agent application form and agreement, which are hereby incorporated by reference. Applications and agreements shall be available, including for inspection and copying, by mail or in person by contacting: Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, KY 40601 between the hours of 8 a.m. and 4:30 p.m. EST on Monday through Friday, except holidays. The effective date of the issuing agent application form shall be April, 1993.

(d) Businesses shall provide either a bond equal to the value of permits consigned, an irrevocable letter of credit from a financial institution equal to the value of permits consigned, pays in advance for any permits consigned, or irrevocably assigns to the department benefits on a certificate of deposit equal to the value of permits consigned.

(2) Issuing fees. The cost of the permit shall include an issuing fee of forty (40) cents to be retained by the permit agent for costs associated with issuing a permit. In no case shall an agent charge additional fees for issuing permits.

(3) Agent issuance requirements.

(a) Each agent shall be given a consignment of permits, in numerical sequence, within the limits of his bond, irrevocable letter of credit or prepayment or assigned benefits of a certificate of deposit. Permits shall be issued sequentially out of the consignment.

(b) No agent shall knowingly record false information on the permit.

(c) If an error is made in issuing that cannot be clearly and legibly corrected, the permit shall be voided and a new permit issued. The voided permit in its entirety shall be returned with the next monthly report and credit shall be given to the agent's account.

(4) Reporting requirements.

(a) All agents shall report to the department the number of permits issued and remit monies collected, less the issuing fee, on or before the tenth day of the month following the month of sale.

(b) On or before twenty-five (25) days after the end of the permit year, each agent shall report to the department the number of permits issued for the preceding year, the amount of money remitted, and return all unissued permits. If permits are not returned as unissued, the agent shall be responsible to the department for payment equal to the value of the permits. Should the agent be unable to remit monies due, the department shall make collection through the agent's bond or irrevocable letter of credit or deduct the amount from the required prepayment or assigned certificate of deposit.

(c) Reports shall be filed on standard report forms provided by the department. The report form is hereby incorporated by reference. Reporting forms shall be available to the public, including for inspection and copying, by mail or in person by contacting: Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, KY 40601 between the hours of 8 a.m. and 4:30 p.m. EST on Monday through Friday, except holidays. The effective date of the form shall be April, 1993.

Section 8. Issuing Agent Designation or Appointment Revocation. (1) Issuing agent designations or appointments shall be revoked if:

(a) The agent is delinquent in submitting reports and monies four (4) times in a twelve (12) month period;

(b) The agent fails to respond to a reminder notice and does not report and remit by the 25th of the month the report is due; or

(c) The agent's check will not clear the bank and the agent does not make restitution by a certified check, cashier's check or money order within five (5) working days of notification.

(2) Any agent whose designation or appointment is revoked shall not be eligible for reinstatement for a period of twelve (12) months. When a designation or appointment is revoked the department shall collect all unissued permits, unreported sales and collect all monies due. Should the agent be unable to remit monies due, the department shall make collection through the agent's bond or irrevocable letter of credit or deduct the amount from the required prepayment or assigned certificate of deposit.

Section 9. Audits. The department may audit the consignment, records and reports pertaining to the sale of permits without prior notice during regular business hours. Failure to remit fees owed as a result of an audit shall be cause to revoke an agent's designation

or appointment.

DON R. McCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: December 8, 1993
FILED WITH LRC: April 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 25, 1993 at 9 a.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the commission room. Individuals interested in attending this hearing shall notify this agency in writing by May 20, 1993, five days prior to the hearing, or their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, 502/564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: Approximately 8,000 users will have to purchase permits.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct costs will be $10 per individual user unless they are covered by an event permit. Indirect costs will not be greater than they ever were and will consist of expenses related to outdoor recreation.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants will have to complete application forms and license vendors will have to apply and provide reports as a result of this regulation.

(2) Effects on the promulgating administrative body: Administrative services to issue and supply licenses to vendors will have to be established.

(a) Direct and indirect costs and savings:

1. First year: All costs are fixed in that existing personnel will accomplish the work. This arrangement could change, however, if the workload becomes too cumbersome.

2. Continuing costs or savings: Same as # 1 above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Permit sales will be audited along with others licenses and permits that are sold by the agency so no additional costs will be incurred relating to reporting and paperwork.

(3) Assessment of anticipated effect on state and local revenues: State management of Peabody Coal Company et al lands should highlight the areas sufficiently to draw outdoor recreationalists into the Ohio and Muhlenburg County area. These tourists will provide revenue directly into the local economies.

(4) Assessment of alternative methods; reasons why alternatives were rejected: If the Department did not develop the cooperative relationship with Peabody et al. to manage their lands, the companies would have closed the lands to outdoor recreation. Our relationship allows public recreation where it has been denied. The department/corporation relationship is short term in light of the fact that it runs from year to year and has a 30 day cancellation clause. Because of this, Peabody WMA lands are not eligible for federal aid cost sharing. Also due to the short term nature, the Department did not feel it was prudent to expend license revenues from other sources to manage Peabody WMA lands. Thus we decided to apply a user fee to the area under the assumption that all users had some impact on the lands.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None that we are aware.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering was applied to recognize two classes of users, individuals and groups. Availability of group permits was restricted to accommodate only short term, sporadic users as opposed to those that utilized the area frequently.

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. We anticipate developing a cooperative working relationship with affected counties in order to facilitate our management and encourage users to travel to and expend funds to benefit the local economies.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only the part relating to commerce and infrastructure upkeep.

3. State the aspect or service of local government to which this administrative regulation relates. None directly in that it requires nothing. Should the local government desire to work with us in developing tourism, the Peabody WMA offers the vehicle and the motivation.

4. How does this administrative regulation affect the local government or any service it provides? Same as in #3 above.

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Jobs Development Authority

307 KAR 2:010. General operations.

RELATES TO: KRS 154.24-010 through 154.24-160
STATUTORY AUTHORITY: KRS 154.24-040(7)
NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Authority Tax Credit Incentive Program established pursuant to KRS 154.24-010 through 154.24-160.

Section 1. Definitions. (1) "Act" means KRS 154.24-010 through KRS 154.24-160.

(2) "Approved company" is defined in KRS 154.24-010.

(3) "Assessment" is defined in KRS 154.24-010.

(4) "Authority" is defined in KRS 154.24-010

(5) "Commonwealth" is defined in KRS 154.24-010.

(6) "Economic development project" is defined in KRS 154.24010.

(7) "Eligible company" means a company defined in KRS 154.24-010 which meets the requirements of this administrative regulation.

(8) "Full-time job" means a job for which an employee works, and is paid for, a minimum of thirty (30) hours per calendar week.

(9) "Inducements" is defined in KRS 154.24-010.

(10) "KRS" means the Kentucky Revised Statutes, as they may be amended from time to time.

(11) "Rent" is defined in KRS 154.24-010.
(12) "Service or technology" is defined in KRS 154.24-010.

Section 2. Service or Technology; Excluded Classifications. (1) "Service or technology" defined in KRS 154.24-010 shall not include the following classifications listed by division in the index of the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget and incorporated by reference in Section 7 of this administrative regulation:
(a) Division A. Agriculture, forestry, and fishing;
(b) Division B. Mining;
(c) Division C. Construction; and
(d) Division D. Manufacturing.
(2) Notwithstanding classifications excluded by subsection (1) of this section, those service and technology activities of a company engaged in an ineligible activity may be approved for the Kentucky Jobs Development Authority Tax Credit Incentive Program if the company's service and technology activity:
(a) Complies with the requirements of this administrative regulation;
(b) Operates as a separate division; and
(c) Is approved by the authority.

Section 3. Kentucky Jobs Development Authority Tax Credit Incentive Program. (1) Companies wishing to participate in the Kentucky Jobs Development Authority Tax Credit Incentive Program shall file an application with the authority which shall contain:
(a) Documentation and certification required pursuant to KRS 154.24-090(1). This documentation shall address the annual gross revenues directly generated from the economic development project. In the case of those economic development projects which for purposes of the approved company and in accordance with generally accepted accounting principles do not generate revenues, such documentation shall address the annual gross revenues generated by the entity for which the services from the economic development project are provided;
(b) Information required pursuant to KRS 154.24-090(2) and (3).
(c) A list of the competitors of the applicant in the Commonwealth;
(d) A detailed explanation setting forth the reasons why the economic development project will not result in a significant number of existing jobs in the Commonwealth being lost or adversely affected; and
(e) Evidence that the economic development project could reasonably and efficiently locate outside of the Commonwealth and, without the inducements offered by the authority, the applicant would likely locate outside the Commonwealth.
(2) Pursuant to KRS 154.24-100 the authority may preliminarily approve eligible companies after consideration of the application for the Kentucky Jobs Development Authority Tax Credit Incentive Program if it determines the company meets all the requirements of the Act and this administrative regulation.

Section 4. Hearing Procedure. (1) The authority shall hold at least one (1) public hearing and receive public comment on the:
(a) Preliminary action taken by the authority pursuant to KRS 154.24-100(3); and
(b) Information supplied to the authority pursuant to Section 3(1) of this administrative regulation.
(2) The hearing shall be held in Frankfort and notice of the hearing shall include the date, time and precise location, including street address, where the hearing shall be held.
(3) The public shall be afforded the opportunity to present evidence and comment on the application at the public hearing.
(4) Public hearings shall be conducted informally to allow reasonable commentary on the application.
(5) Public hearings shall be tape recorded by the authority and copies made available to the public at a cost which shall not exceed the expense of making the copy.
(6) The hearing agent shall summarize the comments offered at the public hearing and shall submit the summary to the authority for its consideration of whether to designate the eligible company as an approved company.
(a) The hearing agent shall not express an opinion about whether the eligible company should be designated by the authority as an approved company.
(b) Two (2) copies of the report of the hearing agency shall be completed and provided to the authority at least ten (10) days prior to its meeting set to consider designating the eligible company as an approved company.

Section 5. Consent of Authority under KRS 154.24120. Before any service and technology agreement as prescribed in KRS 154.24-120 shall become effective, the legislative body of the local jurisdiction, if required, shall have approved by official action, with the consent of the authority, the granting to an eligible company of the right to withhold assessments from its employees, or in lieu of a credit against the local occupational license fee, the provision of:
(1) A service benefit, on a per annum basis for the term of the service and technology agreement (and so long as assessments are to be withheld), equal to one (1) percent of the wages of the employees which otherwise would have been subject to the local occupational license fee; or
(2) An in-kind contribution equal to one-half (1/2) of the rent of the eligible company.

Section 6. Service and Technology Agreement Contents. In addition to the information required pursuant to KRS 154.24-120 the service and technology agreement shall provide for:
(1) Annual, quarterly or monthly progress reports to the authority;
(2) Annual, quarterly or monthly certifications as to compliance with KRS 154.24-090(1), 154.24-120(2)(b) and 154.24-140(4);
(3) Annual certifications as to rental payments referred to in KRS 154.24-130(2);
(4) Annual, quarterly or monthly financial reports to the authority; and
(5) Access to the approved company's records.

Section 7. Incorporation by Reference. (1) The "Application for the Kentucky Jobs Development Authority Tax Credit Incentive Program" (March 1993) and the "Standard Industrial Classification Manual" (1987 ed.) from the United States Office of Management and Budget are incorporated by reference.
(2) Copies of the "Application" and the "Manual" may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

W. PATRICK MULLOY, II, Chairman
APPROVED BY AGENCY: February 16, 1993
FILED WITH LRC: April 14, 1993 at 2 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 10 a.m. at 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification or intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed

administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Benjamin E. Fuqua, Commissioner, Financial Incentives, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Benjamin E. Fuqua

(1) Type and number of entities affected: This regulation affects companies which apply for status as approved companies under KRS 154.22-010 to 154.22-150 (the "Act"), entitling them to certain benefits provided under the Act. The number of companies which will apply is unknown.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs of savings to those affected entities because the regulation does not require information in excess of the requirements mandated by the Act.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon completion): None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Jobs Development Authority Tax Credit Incentive Program.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Kentucky Jobs Development Authority since the regulation merely clarifies the requirements set forth in the statutes.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Jobs Development Authority Tax Credit Incentive Program.

(3) Assessment of anticipated effect on state and local revenues: The Act's tax credit incentive program affects state and local revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of income tax credits to both the companies and the employees of the companies. However, the regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for applications by eligible companies.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods to the regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: With the exception of the statutory provisions under the Act clarified by this regulation, there is no known statute, administrative regulation or government policy which is in conflict, overlaps, or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict: There is no apparent conflict between the statutes and the proposed administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no apparent conflict between the proposed administrative regulation and the statutes under which it was promulgated.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. No tiering was applied because all eligible companies applying for benefits under the tax incentive program will be treated in a uniform manner.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect the treasury departments of local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the local government's collection of revenues. KRS 154.24-090 sets forth the criteria to be included in administrative regulations regarding the approval of eligible companies and economic development projects conducted by those companies. KRS 154.24-110 provides the inducements available to approved companies, one of which is a credit against local occupational license fee. KRS 154.24-150 allows a local government to elect to offer alternative inducements.

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.

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: The purpose of this administrative regulation is to set out the application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Authority Tax Credit Incentive Program established pursuant to KRS 154.24-010 through 154.24-160. This administrative regulation indirectly will increase the number of persons from whom the local government may collect tax revenues, although by imposition of the service and technology job creation assessment fee under KRS 154.24-010 through 154.24-160, the local government may be unable to collect any local occupational license fees or the amount of such fees may be less than the local government could normally collect from employees. For those employees whose employers require them to pay a service and technology job creation assessment fee and whose jobs have been determined to have been created as a result of the economic development project, the local government will forego revenues to the extent that such employee receives a credit against the local occupational license fee incurred for the tax year in the jurisdiction in which the economic development project is located. KRS 154.24-110 provides that the credit against the local occupational tax is equal to one-fifth (1/5th) of the assessment withheld from wages during the calendar year. KRS 154.24-110 provides that if more than one local tax is incurred, the credit shall be prorated among the taxes. In lieu of this credit against the local occupational license fee, the local government may elect to provide a service benefit, on a per annum basis for the term of the service and technology agreement, equal to one percent of the wages of the employees which would otherwise have been subject to the local occupational license fee or an in-kind contribution equal to one-half (1/2) of the rent of the eligible company. Neither state nor local government expenditures should be increased or decreased as a result of this administrative regulation. This administrative regulation should have no effect on the number of employees or other cost factors of local governments.

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Industrial Revitalization Authority

307 KAR 3:010. General operations.

RELATES TO: KRS 154.26-010 through 154.26-100
STATUTORY AUTHORITY: KRS 154.26-030(5)
NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Authority Tax Credit Incentive program established pursuant to KRS 154.26-010 through 154.26-100.

Section 1. Definitions. (1) "Act" means KRS 154.26-010 through 154.26-100.

(2) "Approved company" is defined in KRS 154.26-010.

(3) "Authority" is defined in KRS 154.26-010.

(4) "Commonwealth" is defined in KRS 154-26.010.

(5) "Economic revitalization project" is defined in KRS 154.26-010.

(6) "Eligible company" is defined in KRS 154.26-010.

(7) "Inducements" is defined in KRS 154.26-010.

(8) "Manufacturing" is defined in KRS 154.26-010.

Section 2. Eligibility Standards. (1) The authority shall approve eligible companies based upon the:

(a) Information supplied to the authority in the application, pursuant to Section 3(2)(a) through (f) of this administrative regulation; and

(b) Comments received at the public hearing pursuant to Section 4(1)(a) through (f) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Industrial Revitalization Authority Tax Credit Incentive Program the authority shall give greatest weight to the:

(a) Information supplied in the application pursuant to Section 3(2)(a) through (c) of this administrative regulation; and

(b) Comments received at the public hearing pursuant to Section 4(1)(a) through (c) of this administrative regulation.

Section 3. Kentucky Industrial Revitalization Authority Tax Credit Incentive Program. (1) Companies that wish to participate in the Kentucky Industrial Revitalization Authority Tax Credit Incentive Program shall file an application with the authority.

(2) The application shall contain the following information:

(a) The eligible company's need for the economic revitalization project and the reasons for the intent of the eligible company to close its manufacturing facility;

(b) The projected amount and timing of capital investment of the eligible company in the economic revitalization project that will result in financial stability for the manufacturing facility of the eligible company;

(c) The projected number of employees to be retained and to be hired in the future at the manufacturing facility of the eligible company over a five (5) year period from the commencement date of the revitalization agreement and as a result of the receipt of the inducements;

(d) Evidence that except for a substantial investment in the economic revitalization project, assisted by the inducements authorized by the Act, the eligible company will close its manufacturing facility, permanently lay off its employees and cease operations;

(e) A description of the condition of the manufacturing facility and of the eligible company's finances, efficiency and productivity; and

(f) A list of alternatives to closing the manufacturing facility available to the eligible company.

Section 4. Hearing Procedure. (1) The authority shall appoint a hearing agent and hold at least one (1) public hearing to solicit public comments regarding the:

(a) Need for the economic revitalization project by the eligible company and the reasons for the closing of the eligible company's manufacturing facility as required by Section 3(2)(a) of this administrative regulation;

(b) Amount and timing of capital investment in the economic revitalization project that will result in financial stability for the manufacturing facility, as required by Section 3(2)(b) of this administrative regulation;

(c) Projected number of employees to be retained and to be hired in the future at the manufacturing facility of the eligible company, as required by Section 3(2)(c) of this administrative regulation;

(d) Likelihood of the applicant closing its manufacturing facility, permanently laying off its employees and ceasing operations in the event no inducements are offered by the authority, as required by Section 3(2)(d) of this administrative regulation;

(e) Condition of the manufacturing facility of the eligible company, as required by Section 3(2)(e) of this administrative regulation; and

(f) Alternatives to closing the manufacturing facility of the eligible company, as required by Section 3(2)(f) of this administrative regulation.

(2) The hearing shall be held in Frankfort and notice of the hearing shall:

(a) Be given pursuant to KRS 424.130; and

(b) Include the date, time and precise location, including street address, where the hearing shall be held.

(3) The public shall be afforded the opportunity to present evidence and comment on the application at the public hearing.

(4) Public hearings shall be conducted informally to allow reasonable commentary on the application.

(5) Public hearings shall be tape recorded by the authority and copies made available to the public at a cost which shall not exceed the expense of providing the copy.

(6) The hearing agent shall summarize the comments offered at the public hearing and shall submit the summary to the authority for its consideration of whether to designate the eligible company as an approved company.

(a) The hearing agent shall not express an opinion about whether the eligible company should be designated by the authority as an approved company.

(b) Two (2) copies of the report of the hearing agent shall be completed and provided to the authority at least ten (10) days prior to its meeting set to consider designating the eligible company as an approved company.

Section 5. Revitalization Agreement Contents. In addition to the information required pursuant to KRS 154.26-090, the revitalization agreement shall provide for:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly financial reports to the authority; and

(3) Access to the approved company's records.

Section 6. Incorporation by Reference. (1) The "Application for the Kentucky Industrial Revitalization Authority Tax Credit Incentive Program" (March 1993) is incorporated by reference.

(2) Copies of the application may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

W. PATRICK MULLOY, II, Chairman
APPROVED BY AGENCY: March 16, 1993
FILED WITH LRC: April 14, 1993 at 2 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on May 24, 1993, at 10 a.m. at 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals

interested in being heard at this hearing shall notify this agency in writing by May 19, 1993, five days prior to the hearing, of their intent to attend. If no notification or intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Benjamin E. Fuqua, Commissioner, Financial Incentives, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Benjamin E. Fuqua

(1) Type and number of entities affected: This administrative regulation affects companies which apply for status as approved companies under KRS 154.26-010 to 154.26100 (the "Act"), entitling them to certain benefits provided under the Act. The number of companies which will apply is unknown.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs of savings to those affected entities because the administrative regulation does not require information in excess of the requirements mandated by the Act.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon completion): None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this administrative regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Industrial Revitalization Authority Tax Credit Incentive Program.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: This administrative regulation will not result in any direct or indirect costs or savings to the Kentucky Industrial Revitalization Authority since the administrative regulation merely clarifies the requirements set forth in the statutes.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this administrative regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Industrial Revitalization Authority Tax Credit Incentive Program.

(3) Assessment of anticipated effect on state and local revenues: The Act's tax credit incentive program affects state and local revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of income tax credits to both the companies and the employees of the companies. However, the administrative regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for applications by eligible companies.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods to the administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: With the exception of the statutory provisions under the Act clarified by this administrative regulation, there is no known statute, administrative regulation or government policy which is in conflict, overlaps, or duplicates this administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: There is no apparent conflict between the statutes and the proposed administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no apparent conflict between the proposed administrative regulation and the statutes under which it was promulgated.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. No tiering was applied because all eligible companies applying for benefits under the tax incentive program will be treated in a uniform manner.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes.

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect the treasury departments of local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the local government's collection of revenues. KRS 154.26-080 sets forth the standards to be included in administrative regulations for the determination and approval of eligible companies and their economic revitalization projects. KRS 154.26-090 and 154.26-100 provide the inducements available to these companies, one of which is a credit against the employee's local occupational license fees.

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.

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: The purpose of this administrative regulation is to set out the application process, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Authority Tax Credit Incentive Program established pursuant to KRS 154.26-010 through 154.26-100. This administrative regulation indirectly may increase the number of persons from whom the local government may collect tax revenues by preserving and creating jobs, although not necessarily in the first year. For those employees whose employers require them to pay a job revitalization assessment fee and whose jobs have been determined to have been preserved or created as a result of the economic revitalization project, local government revenues will be decreased to the extent that such employee receives a credit against his local occupational license fee in the form of an adjustment of his local occupational license fee equal to one-sixth of the job revitalization assessment fee. KRS 154.26-090 provides that if more than one local tax is incurred, the credit shall be prorated among the taxes. KRS 154.26090(1)(d)2b provides that a company can secure from all local government authorities responsible for collecting local occupational fees, in lieu of the credit against the local occupational license fee, an agreement with local governmental entities by which such governmental entities will appropriate funds in an amount equal to the amount of the credit of the local occupational license fee for the benefit of the approved company. Unless such an agreement as described in KRS 154.26-090(1)(d)2b is consummated, neither state nor local government expenditures should be increased or decreased as a result of this administrative regulation. This administrative regulation should have no effect on the number of

employees or other cost factors of local governments.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 49:210. Solid waste revolving fund.

RELATES TO: KRS CHAPTER 224, 224A
STATUTORY AUTHORITY: KRS 224A.270
NECESSITY AND FUNCTION: KRS Chapter 224A establishes a solid waste revolving fund that provides financial assistance to governmental agencies for the construction or acquisition of certain solid waste projects. KRS 224A.270 directs the Natural Resources and Environmental Protection Cabinet to adopt administrative regulations establishing eligibility criteria and criteria for prioritization. This administrative regulation establishes definitions, eligibility requirements, application requirements, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet in fulfilling its role in administration of this program.

Section 1. Definitions. For the purposes of this administrative regulation, the words and terms shall have the same meaning as in KRS 224.01-010 and 224A.011, with the following additions:

(1) "Applicant" shall mean an agency of the state or its political subdivisions, a city, or a special district created under the laws of the state, acting individually or jointly under interagency or interlocal cooperative agreement, that has submitted an application.

(2) "Application" shall mean an application submitted to the cabinet for a loan from the solid waste revolving fund.

(3) "Eligible project" shall mean the capital expenses, including equipment purchases, that are part of the construction, renovation, or acquisition of a solid waste management facility, which could include, but is not limited to, a landfill, transfer station, convenience center, incinerator, landfarm facility, recycling facility or composting facility.

(4) "Solid waste revolving fund" shall mean the solid waste revolving fund established by KRS 224A.270.

Section 2. General Eligibility Requirements and Conditions to Financial Assistance. (1) Applications shall be submitted only by applicants for eligible projects.

(2) Each applicant shall have the legal authority to construct or acquire, operate, and maintain the project for which financial assistance is sought from the solid waste revolving fund.

(3) The applicant shall participate in or implement a universal collection program for all municipal solid waste.

(4) The applicant shall have access to a permitted solid waste disposal facility.

(5) The applicant shall have a solid waste management plan approved by the cabinet or be part of an area that has a solid waste management plan approved by the cabinet.

(6) Applicants shall meet eligibility requirements of the state clearinghouse process set forth in KRS 45.031 and shall submit to the clearinghouse all appropriate documentation.

(7) The applicant shall have an existing or proposed system for collection of a service fee, dedicated tax, or appropriation, which shall be used to support the funded project.

Section 3. Application Submission and Review. (1) The application form, DEP Form 7096, entitled "Solid Waste Revolving Fund: Application for Loan" (March 1993) and its requirements are hereby incorporated by reference. Copies may be obtained from the cabinet's Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601 during the normal work hours of 8 a.m. to 4:30 p.m., Monday through Friday. The applicant shall submit the original and three (3) copies of the completed application to the Division of Waste Management.

(2) The cabinet shall review applications upon submission to determine the degree to which the proposed project meets the criteria for eligibility and prioritization set forth in Sections 2 and 4 of this administrative regulation.

Section 4. Criteria for Prioritizing Project Applications. (1) The cabinet shall prioritize all applications that meet eligibility requirements using a scoring system that measures the degree to which the proposed project:

(a) Is given preference under the hierarchy set forth in KRS 224.43-010(3);

(b) Complies with the goals and objectives of the solid waste management plan approved by the cabinet;

(c) Serves the population of the county;

(d) Possesses or has applied for all necessary permits required by the cabinet;

(e) Is consistent with the project design and the objectives stated in the application;

(f) Will continue operation and maintenance for the life of the loan;

(g) Is proposed by an applicant who has complied with statutes and regulations related to solid waste reduction and management; and

(h) Is needed and otherwise unavailable.

(2) The cabinet, after reviewing all eligible applications shall submit the projects recommended for funding in priority order to the Kentucky Infrastructure Authority with all application information attached.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: April 9, 1993
FILED WITH LRC: April 14, 1993 at 8 a.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Thursday, May 27, 1993 at 10 a.m. local time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below by May 22, 1993 of their intent to attend. If no notification of intent to testify at the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the Division with a written copy of their testimony. A transcript of the hearing will not be made unless a written request for a transcript is made on or before May 22, 1993. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. on May 27, 1993. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request the Department provides reasonable accommodation to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Mr. Hale no later than May 22, 1993.
CONTACT PERSON: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

Contact Person: James Hale
(1) Type and number of entities affected: The proposed regulation establishes definitions, eligibility requirements, application require-

ments, and prioritization criteria to be used by the Natural Resources and Environmental Protection Cabinet in fulfilling its role in administration of the Solid Waste Revolving Fund Loan Program.

(a) Direct and indirect costs or savings to those affected: Local governments meeting eligibility criteria will be able to submit applications to fund projects with low interest loans from the Solid Waste Revolving Fund. The cabinet will prioritize the projects and make recommendations to the Kentucky Infrastructure Authority. Approximately $15,0000,000 is currently available.

1. First year: There will be some costs incurred in preparing the applications to take advantage of the low interest loans.

2. Continuing costs or savings: Loan repayment will not exceed 30 years.

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: Local governing bodies will be required to determine if proposed projects are consistent with area solid waste management plans. Any person seeking a loan from the Solid Waste Revolving Fund will be required to submit an application to the Division of Waste Management. Recipients of a loan from the Fund will be required to submit quarterly reports to the Division of Waste Management.

(2) Effects on the promulgating administrative body: There will be additional costs imposed on the cabinet. These costs include additional direct and indirect expenses for providing resources to review and prioritize loan applications.

(a) Direct and indirect costs or savings:

1. First year: Division costs will depend on the number of applications received and the complexity of the projects. However, the Cabinet anticipates at least $7,250 in direct costs and $2,000 in indirect costs will be required annually.

2. Continuing costs or savings: Division costs are anticipated to continue for as long as the Solid Waste Revolving Fund is budgeted.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The cabinet will review and prioritize applications and make recommendations to the Kentucky Infrastructure Authority. There will be paperwork associated with each of these duties.

(3) Assessment of anticipated effect on state and local revenues: Local governing bodies will be required to determine if the proposed project is consistent with the area solid waste management plan and make application to the Division of Waste Management.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the provisions of state law, there were no alternative means of implementing the Solid Waste Revolving Fund Loan Program than the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: There is no statute or administrative regulation which conflicts, duplicates, or overlaps with this proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or policy in conflict with this proposed administrative regulation.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: There is no statute, administrative regulation, or policy in conflict with this proposed administrative regulation.

(6) Any additional information or comments: The purpose of this proposed administrative regulation is to establish criteria for eligibility and prioritization for applications for loan assistance from the Solid Waste Revolving Fund.

TIERING: Tiering was not appropriate in this administrative regulation because the distribution of public funds requires that all applicants meet the same eligibility requirements to ensure equal distribution. Disparate treatment of any entity making application under 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 impacted as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. Cities, counties, and urban-county governments with approved solid waste management plans are eligible for loans from the Solid Waste Revolving Fund.

3. State the aspect or service of local government to which this administrative regulation relates. Cities, counties, and urban-county governments with approved solid waste management plans.

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 (+/-): This proposed administrative regulation will enable the distribution of loan monies to be used by local governments who are interested in pursuing solid waste management projects.

Expenditures (+/-): The cost of preparing an application for loan assistance from the Solid Waste Revolving Fund should be minimal and should not outweigh the benefit of receiving funds to assist with local responsibilities for solid waste management.

Other Explanation: This proposed administrative regulation will provide additional resources for cities, counties, and urban-county governments to assist with their responsibilities for solid waste management.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development

704 KAR 7:120. Home or hospital instruction.

RELATES TO: KRS 159.030

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220

NECESSITY AND FUNCTION: KRS 156.070, 156.160, and 157.220 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local school districts and state operated schools shall meet in student, program, services and operational performance and related to special education programs. KRS 159.030 provides exemptions from compulsory attendance for students whose physical or mental condition prevents or renders inadvisable attendance at school or application to study. This administrative regulation establishes minimum requirements for home or hospital instruction programs.

Section 1. General Provisions. Local boards shall operate programs for home instruction and hospital instruction for children of school age pursuant to KRS 157.200 and the criteria listed below.

Section 2. It shall be determined that a child or youth is to be provided home or hospital instruction if the condition of the child or youth prevents or renders inadvisable attendance at school as verified by a signed medical statement in accordance with KRS 159.030(2). Local directors of pupil personnel and a home or hospital teacher, in conjunction with local health personnel, shall review each medical statement and other information as available to confirm or reject the

need for home or hospital instruction. Forms for the required medical statement shall be provided by the Kentucky Department of Education (KDE).

Section 3. Temporary Placement for Children or Youth on Home or Hospital Instruction. Local boards of education shall implement referral and placement procedures in accordance with local board policy for children or youth with temporary conditions such as fractures, surgical recuperation, or other physical, health, or mental conditions. The condition of pregnancy is not to be considered a physical or health impairment in and of itself, and the nature and extent of any complication must be delineated prior to consideration of home or hospital services for this condition.

Section 4. Extended Placement for Children or Youth on Home or Hospital Instruction. Local boards of education shall implement referral, placement, and review procedures for children or youth whose physical or mental health condition results in placement in a home or hospital setting more than six (6) months. Any child or youth who is exempted from school attendance more than six (6) months shall have two (2) signed medical statements. Such exemptions shall be reviewed annually with a plan and timeline developed for returning the child or youth to school or documentation maintained verifying why such a consideration is not feasible.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, or suspected of having disabilities, and their parents, and private schools and facilities.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: Paperwork and reporting requirements are not changed by this administrative regulation. Documentation is maintained for compliance with the federal requirements established in 1977 that a child or youth with a disability who is placed in or referred to a private school or facility by a public agency is provided specially designed instruction and related services in conformance with an Individual Education Program, at no cost to the parents, in a school or facility that meets state standards that apply to local education agencies consistent with the requirements under Part B of the Individuals with Disabilities Education Act.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Local school districts should have complete and accurate local policies and procedures for compliance with the administrative regulation which will require less staff time in reviewing, monitoring, training, and providing technical assistance for compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and follow-up to corrective action plans.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the State. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:061. Repeal of existing administrative regulations.

RELATES TO: KRS 157.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220

NECESSITY AND FUNCTION: KRS 156.070, 156.160 and 157.220 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local school districts and state operated schools shall meet in student, program, services and operational performance and related to special education programs. KRS 157.200 establishes the statutory framework for special education programs. This administrative regulation repeals currently existing administrative regulations related to special education programs, as new administrative regulations have been promulgated to address special education requirements.

Section 1. The following administrative regulations are hereby repealed:

(1) 707 KAR 1:041, Programs for Deaf-Blind Children;

(2) 707 KAR 1:051, Exceptional Children's Programs;

(3) 707 KAR 1:052, Programs for Children with Communication Disorders;

(4) 707 KAR 1:053, Programs for Physically Handicapped and Other Health Impaired Children;

(5) 707 KAR 1:054, Programs for the Emotionally Disturbed, Behavior Disordered;

(6) 707 KAR 1:055, Programs for Home Instruction and/or Hospital Instruction;

(7) 707 KAR 1:056, Programs for Children with Specific Learning Disabilities;

(8) 707 KAR 1:057, Programs for Mentally Handicapped Children;

(9) 707 KAR 1:058, Programs for Multiple Handicapped Children;

(10) 707 KAR 1:059, Programs for Visually Handicapped Children;

(11) 707 KAR 1:060, "Due Process Policy and Procedure Manual";

(12) 707 KAR 1:070, Nonpublic School Program Approval; and

(13) 707 KAR 1:080, Appeals Board.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities and their parents.

(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 effect 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 anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative was available to repeal all previous regulations.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the State. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:160. Free appropriate public education.

RELATES TO: KRS 157.200, 157.360, 158.030, 158.100, 160.290, 167.150, 20 USC 1232g, 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 157.260, 167.015

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended.

Section 1. Definitions. (1) "At no cost to parents" means that the specially designed instruction and related services specified in the IEP of a child or youth with a disability is provided without charge to parents. At no cost to parents also includes at no cost to the child or youth if emancipated according to 707 KAR 1:080. This requirement does not preclude charging incidental fees which are normally charged to children and youth without disabilities or their parents as part of the regular education program.

(2) "First priority" means children and youth with disabilities who are age three (3) through twenty (20) and are not receiving any education.

(3) "Free appropriate public education (FAPE)" means specially designed instruction and related services which:

(a) Are provided at public expense under public supervision and direction;

(b) Meet state standards and requirements under Part B of Individuals with Disabilities Education Act (IDEA);

(c) Include an appropriate preschool, primary, elementary, middle school, or secondary school education; and

(d) Are provided in conformity with an individual education program (IEP).

(4) "Local education agency (LEA)" means a public board of education or other legally constituted public authority for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district or other political subdivision of the Commonwealth, or any combination of school districts as is recognized by the Commonwealth as an administrative agency for its public elementary or secondary schools. The term also includes any other public institution or agency having administrative control or direction of a public elementary or secondary school.

(5) "Policies and procedures" means written statements describ-

ing actions local education agency personnel take to achieve a specified outcome and includes:

(a) Circumstances requiring action;

(b) Sequence, timelines, and specific steps to be taken, including any conditional relationships;

(c) Source and location of documentation of implementation; and

(d) Personnel accountable for implementation.

(6) "Second priority" means children and youth with disabilities, within each disability category, with the most severe disabilities who are receiving an inadequate education.

(7) "State standards" means administrative regulations established by the State Board for Elementary and Secondary Education for public schools in Kentucky.

Section 2. Full Educational Opportunity Goal (FEOG). (1) Each LEA shall establish and implement a goal and a detailed timetable for providing full educational opportunity to all children and youth with disabilities residing in the area served by the LEA.

(2) Each LEA shall take steps to meet the timelines in the timetable and achieve the goal to provide a full educational opportunity for all children and youth with disabilities ages birth through twenty-one (21).

(3) The full educational opportunity goal established by each LEA shall include the availability of facilities, personnel, and services to further enrich the educational opportunity of children and youth with disabilities.

(4) Each LEA shall include the participation of and consultation with parents of children and youth with disabilities in meeting the full educational opportunity goal requirement.

(5) Each LEA shall specify the timelines for projected dates for provision of full educational opportunities to all children and youth with disabilities ages birth through twenty-one (21) in the area served by the LEA in the application for federal funds under Part B of IDEA.

Section 3. Policies and Procedures. Each LEA shall have local board approved policies and procedures in operation for making a free appropriate public education available to each child or youth with a disability. Policies and procedures shall address each requirement in Sections 4, 5, 6 and 7 of this administrative regulation.

Section 4. Free Appropriate Public Education (FAPE). (1) Each LEA shall make a free appropriate public education available to each child or youth:

(a) Whose age is three (3) through twenty (20) years;

(b) Who resides in a home, facility, residence, or any type of shelter within the district's geographical boundaries, except for those situations to which 707 KAR 1:250, Section 6(3), applies;

(c) Who has a disability, regardless of the severity;

(d) Who needs specially designed instruction and related services; and

(e) Who has not graduated as defined in 707 KAR 1:220.

(2) Each LEA shall make a free appropriate public education available to a youth with disabilities aged twenty-one (21) or older under the following conditions:

(a) If an LEA has a board of education policy which sets age limits of twenty-one (21) years or older for educational services for individuals who are not disabled, then the policy shall apply to individuals with disabilities.

(b) If an LEA has no written policy which sets age limits for educational services to individuals who are not disabled, and if individuals who are not disabled receive educational services until program completion, then this practice shall apply to individuals with disabilities.

(c) If an LEA provides education to fifty (50) percent or more of its youth who are twenty-one (21) with disabilities in any disability category, it shall make a free appropriate public education available to all of its youth with disabilities of the same age who have that disability; or

(d) If the LEA provides education to a youth with disabilities who is twenty-one (21) or older, it shall make a free appropriate public education (FAPE) available to that youth and provide the youth and parents all of the rights under Part B of IDEA and Kentucky statutes, and administrative regulations.

Section 5. No Cost to Parents. (1) Each LEA shall provide specially designed instruction and related services for children and youth with disabilities, regardless of the severity of the disability, at no cost to parents.

(2) Each LEA shall make sure that any expenses for the identification, evaluation, and educational placement of a child or youth with disabilities, or the provision of specially designed instruction and related services for a child or youth with disabilities are at no cost to parents.

(3) The LEA may ensure services at no cost to parents through:

(a) Interagency agreement; state, local or federal funds; or insurance reimbursement arrangements; or

(b) The use of third party payments, private or public, which support the education or noneducation costs of providing a child or youth with a disability a free appropriate public education. The LEA may use third party payments if:

1. The parents agree;

2. There are no "out-of-pocket" costs for the parent such as a deductible amount incurred in filing a claim;

3. There is no increase in costs to the parents; and

4. There is no decrease in benefits to the parents.

(4) Each LEA shall provide and use local, state, federal and other fiscal resources as needed to provide the specially designed instruction and related services needed by children and youth with disabilities.

(5) Each LEA shall administer and use all fiscal resources available for the education of children and youth with disabilities according to all applicable state and federal laws and regulations.

Section 6. Programs for Children and Youth with Disabilities. (1) Services for children and youth with disabilities shall include:

(a) Individualized instruction to meet the unique needs of a child or youth with disabilities; and

(b) The variety of programs, services, and activities provided for children and youth without disabilities.

(2) At least annually, each LEA shall establish and implement procedures for evaluation of the effectiveness of programs in meeting the educational needs of children and youth with disabilities, including evaluation of the effectiveness of the IEP.

Section 7. Policy on Priorities. Each LEA shall use Part B funds under IDEA in the following order of priorities:

(1) To provide a free appropriate public education (FAPE) to first priority children and youth including the location, identification, and evaluation of first priority children and youth.

(2) To provide a free appropriate public education (FAPE) to second priority children and youth, including the location, identification, and evaluation of second priority children and youth.

(3) To meet other requirements of Part B under IDEA.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies, two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities and their parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: No additional paperwork or reporting is required for this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: The reporting and paperwork requirements have not changed.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation contains the requirement of the federal mandate.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1412 (2)(B)-(C);34 CFR Parts 300.8, 300.121-2, 300.222, 300.300, 300.304-6.

2. State compliance standards. This regulation sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform to the Individuals with Disabilities Education Act, as amended.

3. Minimum or uniform standards contained in the federal mandate. 34 CFR 300.300 mandates that each state shall ensure that a free appropriate public education is available to all children with disabilities ages three to twenty-one.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:170. Identification of children and youth with disabilities.

RELATES TO: KRS 156.160, 157.200, 157.360, 158.030, 158.100, 158.6451(e), 160.290, 167.150, 20 USC 1232e,g, 1401-1418, 1478(a)

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 157.260, 167.015

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for the location, identification and evaluation of children and youth who may be disabled and in need of specially designed instruction and related services. This administrative regulation is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

Section 1. Definitions. (1) "Evaluate" means procedures used to determine if a child or youth has a disability and the nature and extent of the need for specially designed instruction and related services.

(2) "Identify" means to collect and use all available information to decide if a child or youth has a suspected disability and possibly needs specially designed instruction and should be referred for evaluation.

(3) "Locate" means to obtain the name and determine the physical location of any child or youth who may have a disability and need specially designed instruction and related services.

(4) "Screening" means the procedure established by each local education agency under KRS 158.6451 and 704 KAR 3:006.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for identification, location, and evaluation of any child or youth residing within the jurisdiction of the LEA who may be disabled, regardless of the severity of the disability, and in need of specially designed instruction and related services. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Child Find System. (1) Each LEA shall plan and implement a child find system to locate, identify, and evaluate each child or youth:

(a) Whose age is between birth and the 22nd birthday;

(b) Who resides in a home, facility, or residence within the LEA's geographical boundaries;

(c) Who is either out of school or in school;

(d) Who may have a disability; and

(e) Who needs specially designed instruction and related services in order to receive a free appropriate public education.

(2) Each LEA's child find system shall:

(a) Have activities to locate, identify, and evaluate children and youth whose age is between birth and the 22nd birthday;

(b) Be available during the normal business day; and

(c) Include opportunities for parent and community involvement.

(3) At least once during a year, each LEA shall actively seek and locate children and youth who may have disabilities by:

(a) Conducting awareness activities with the general public and with LEA personnel to notify them of the need to find children and youth with disabilities who need specially designed instruction and related services;

(b) Contacting private and parochial schools and other programs and agencies providing services to children and youth to notify them of the availability of specially designed instruction and related services and methods of referral; and

(c) Conducting screening activities to identify any child or youth who may need further evaluation to determine if the child or youth has a disability and needs specially designed instruction and related services.

(4) Each LEA shall use the results from any screening and other procedures including those established under 704 KAR 3:006 relating to the Kentucky Education Reform Act (KERA) and school enrollment information as sources to identify children and youth who may have a disability and need specially designed instruction and related services. This information may be used if:

(a) The LEA's screening program checks the following developmental and skill areas:

1. Physical functioning;
2. Communication functioning;
3. Cognitive functioning;
4. Social and emotional competence; and
5. Academic performance.

(b) The LEA's screening program is nondiscriminatory and:

1. Applies established criteria for passing and not passing each screening activity;

2. Includes instruments and techniques appropriate for the various modes of communication and languages in the community;

3. Uses only those persons who are qualified and appropriately trained according to the user's manual or directions to conduct screening activities;

4. Includes methods for maintaining individual information from screening results; and

5. Includes activities which occur on a regularly scheduled basis and as needed.

(5) Each LEA shall conduct identification activities to follow up on the results of location activities including:

(a) Contacting the parent of the child or youth to obtain additional information;

(b) Reviewing information available from the parent of the child or youth and any other information available through school or other agency records to determine the need for further action; and

(c) Referring the child or youth to an age-appropriate school or service agency for additional services.

Section 4. Public Notice. (1) Each LEA shall provide public notice before any major identification, location, and evaluation activity.

(2) Each LEA shall use methods of announcing child find activities that distribute the notice to reach parents who are located within the geographical area of the LEA's jurisdiction.

(3) Each LEA shall use printed and oral announcements of child find activities in the native language or other modes of communication of the various populations in the geographical boundaries.

Section 5. Evaluation. Each LEA shall conduct or make arrangements for a full and individual, nondiscriminatory evaluation to determine if an identified child or youth has a disability and needs specially designed instruction and related services. A child or youth suspected of having a disability shall be evaluated in all areas related to the suspected disability at no cost to the parent.

Section 6. Child Tracking. (1) Each LEA shall have a practical method of determining (tracking):

(a) Which children and youth have a disability, have IEPs, and are receiving specified services on the IEP;

(b) Which children and youth need specially designed instruction and related services but are not currently receiving these services; and

(c) Which children and youth are in the process of identification, location, evaluation and possible placement.

(2) The tracking system shall follow each child or youth through the process of identification, evaluation, educational placement and provision of a free appropriate public education and shall include:

(a) The current status of each child or youth in the identification, location, referral, evaluation, eligibility, placement, review, and reevaluation process at any given time;

(b) The name, current address, sex, date of birth, disability, current or known service providers, representative for educational decision making, and relationship of the representative to the child or youth;

(c) Information needed for required state and federal data reports and requests; and

(d) Confidentiality of data collected, maintained and used.

(3) Each LEA shall monitor the tracking system to determine accuracy of information.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, or suspected of having disabilities, and their

parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: Paperwork and reporting requirements are not changed by this administrative regulation. Documentation is maintained for compliance with the federal requirements established in 1977 that all children and youth birth through 21 with disabilities, regardless of the severity, are identified, located, and evaluated.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Local school districts should have completed and accurate local policies and procedures for compliance with the administrative regulation which will require less staff time in reviewing, monitoring, training, and providing technical assistance for compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and follow-up to correct action plans.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1411(d), 1412(2)(C), 1414(a)(1)(A); 34 CFR Part 300.

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that all children residing in the state who are disabled, regardless of the severity of their disabilities, and who are in need of specially designed instruction and related services are identified, located, and evaluated.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for child identification.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:180. Due process procedures.

RELATES TO: KRS 157.200, 157.360, 158.030, 158.100, 167.150, 20 USC 1232g, 1401-1418

STATUTORY AUTHORITY: KRS 156.070, 156.160, 156.210, 157.220, 157.260, 167.015

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

Section 1. Definitions. (1) "Consent" means that:

(a) The parent of the child or youth has been fully informed of all information relevant to the activity for which consent is sought;

(b) The parent of the child or youth understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent of the child or youth understands that the granting of consent is voluntary and may be revoked at any time.

(2) "Emancipated youth" means:

(a) A youth who has reached the age of majority, eighteen (18), and no evidence exists that there is a court order or legal document showing the parent as the guardian or youth's representative in educational matters; or

(b) A youth who is married.

(3) "Native language of the parent of a child or youth" means the primary language used in the home, that is, the language most frequently used for communication by the parent of the child or youth.

(4) "Parent" means a parent, a guardian, a person acting as a parent of a child or youth, a permanent foster parent or a surrogate parent appointed by the LEA as required by this administrative regulation. The term does not include a guardian who is an employee of the Commonwealth if the child or youth is a ward of the state.

(5) "Procedural safeguards" means all rights guaranteed to the parent and the child with disabilities under Subpart E of the Individuals with Disabilities Education Act (IDEA).

(6) "Public expense" means that the LEA either pays for the full cost of the evaluation or makes sure that the evaluation is otherwise provided at no cost to the parent.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation to address procedural safeguards. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Timelines. Each LEA shall establish and implement reasonable timelines for the identification, evaluation, and placement of children and youth suspected of having disabilities to occur without delay. The total amount of time from the date of the completed referral until the date services are initiated, excluding the number of days the LEA is waiting for parental decisions, shall not exceed sixty (60) school days.

(1) An admissions and release committee (ARC) meeting, to complete the individual education program (IEP), be held within thirty

(30) calendar days of a meeting when an ARC determines, based on a full and individual evaluation, that a child or youth is eligible for specially designed instruction and related services. This timeline shall be included within the sixty (60) day school timeline above.

(2) The ARC shall develop an IEP for each child or youth with a disability before specially designed instruction and related services are provided.

(3) The IEP for initial placement shall be implemented as soon as possible after notice and consent for initial placement.

(4) A meeting for the annual review of the IEP shall be held within twelve (12) calendar months of the date of the meeting when the IEP was developed.

(5) For each child or youth receiving specially designed instruction, the IEP shall be implemented as soon as possible after the ARC meeting where the IEP is reviewed and revised.

(6) The LEA shall have in effect an IEP for each child or youth with a disability who needs specially designed instruction and related services at the beginning of each school year.

(7) The LEA's timelines for reevaluation of children and youth currently receiving specially designed instruction services shall not exceed thirty-six (36) calendar months from the date the ARC convened and determined eligibility for specially designed instruction and related services.

Section 4. The ARC Membership. The LEA shall establish admissions and release committees (ARCs) with appropriate membership that addresses the process of identification, evaluation, and placement of children and youth and the provision of free appropriate public education for children and youth with disabilities.

(1) The LEA shall ensure that each ARC meeting includes the following participants:

(a) Parent;

(b) Child or youth, where appropriate;

(c) Regular education teacher of the child or youth;

(d) Teacher of exceptional children who is knowledgeable of the disability or suspected disability;

(e) Administrator or designee, other than the child's teacher, who is qualified to provide or supervise the provision of specially designed instruction. The administrator or designee shall have the authority to commit personnel and fiscal resources;

(f) Others as requested by any member of the ARC. Teacher organization officials are not authorized to participate in ARC meetings to represent teachers.

(2) For a child or youth who has been evaluated for the first time, the LEA shall ensure that one (1) of the following participates in the ARC:

(a) A member of the evaluation team; or

(b) The representative of the agency, the child or youth's teacher, or some other person knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(3) If the purpose of the ARC is the consideration of transition services, the LEA shall invite the youth and a representative of any other agency that is likely to be responsible for providing or paying for the transition services.

(a) If the youth does not attend the ARC meeting, the LEA shall take other steps to ensure that the youth's preferences and interests are considered; and

(b) if an agency is invited but does not send a representative to the ARC meeting, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

(4) If the purpose of the ARC is to send or receive a child to or from a private, LEA, public or state operated program, the membership shall include a representative of the other program.

Section 5. The ARC Process. Each LEA shall ensure that each ARC follows due process procedures to ensure that children and their parents are guaranteed procedural safeguards and that meetings are initiated for the purposes of:

(1) Acting on referrals as follows:

(a) Review complete, written referrals;

(b) Determine the need to evaluate;

(c) Determine the need for written parental consent to evaluate.

(2) Act on evaluation as follows:

(a) Determine that a full and complete evaluation was conducted;

(b) Determine if the child or youth can be classified as having a disability; and

(c) Develop a remedial plan if the ARC determines the child or youth is not eligible for specially designed instruction or related services.

(3) Developing, reviewing, or revising an IEP as follows:

(a) Ensure that the IEP meets regulatory requirements;

(b) Review and revise the IEP at least annually or as requested by any ARC member.

(4) Determining placement as follows:

(a) Determine placement in the least restrictive environment;

(b) Determine placement at least annually, or as the IEP is revised;

(c) Propose or refuse to provide services based on the current and complete IEP in the place determined;

(d) Determine the need for written parental consent for services;

(e) Ensure that services are provided.

(5) Acting on reevaluation as follows:

(a) Ensure that a full and complete evaluation is conducted at least every three (3) years or as requested by any ARC member;

(b) Review the full and individual evaluation information; and

(c) Propose and refuse continuation or change in placement.

Section 6. Notice. The LEA shall provide written notices to parents within LEA established timelines and procedures each time the LEA proposes or refuses to initiate, continue, or change the identification, evaluation, placement or provision of a free appropriate public education.

(1) Notice shall be provided at the point of:

(a) Referral as a possible candidate for programs for specially designed instruction and related services;

(b) Individual initial evaluation;

(c) Initial placement;

(d) Continued or change in placement;

(e) Reevaluation; and

(2) The written notice given to parents shall include, as follows:

(a) A full explanation of all the procedural safeguards available to the parents under Subpart E of Part B of IDEA;

(b) A description of the action proposed or refused by the LEA;

(c) An explanation of reasons the LEA proposes or refuses to take action;

(d) A description of any options the LEA considered and the reasons those options were rejected;

(e) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;

(f) A description of any other factors relevant to the LEA's proposal or refusal; and

(g) Information that if the parent prevails in administrative hearings or court action, courts may award reasonable attorney fees and costs.

(3) Additional requirements.

(a) The LEA shall provide written notices which are understandable to the general public.

(b) The LEA shall determine the language or mode of communication used by the parent of the child or youth and provides the notice in that language or mode of communication unless clearly not feasible to do so.

(c) If the native language or other mode of communication is not a written language, the LEA shall ensure:

1. That the notice is translated orally or by other means to the parent in his native language or other mode of communication;

2. That the parent understands the content of the notice; and

3. That there is written evidence that these requirements have been met.

(4) Notice of ARC meeting. The LEA shall take steps to ensure that one (1) or both of the parents of the child or youth are present at each meeting or are afforded the opportunity to participate, including:

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed upon time and place;

(c) The notice of an ARC meeting sent to parents shall indicate:

1. The purpose of the meeting;

2. The date and time and how the parent indicates the need for an alternate meeting date or time;

3. The location and how the parent indicates the need for an alternative meeting location;

4. The names and titles of all persons who are expected to attend;

5. Information stating that the parent of the child or youth may bring persons to give them aid or support;

a. That if the parent selects another person to act as an agent (attorney or advocate), the LEA is to be informed in writing that person has authority to represent him in educational matters; and

b. That a person selected to act as an agent during a meeting is not empowered to provide or deny written consent and that the LEA only recognizes one (1) agent at any given time; however, the parent of the child or youth may replace an agent at will;

6. If a purpose of the ARC meeting is the consideration of transition services, the notice shall also:

a. Indicate this purpose;

b. Indicate that the LEA will invite the child or youth; and

c. Identify any other agency that will be invited to send a representative.

(d) When the LEA is unable to convince the parents that they should attend, a meeting may be conducted without a parent in attendance, provided the LEA maintains records of attempts to arrange a mutually agreed-on time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of these calls;

2. Copies of correspondence sent to the parents and any responses received;

3. Detailed records of visits made to the parents' home or place of employment and results of those visits.

(e) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English and document such action.

(f) If parents do not attend the ARC meeting, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

(g) Parents shall receive a copy of the IEP regardless of whether they attend the ARC meeting.

Section 7. Consent. The LEA shall obtain written, informed parental consent prior to initial evaluation and initial provision of services.

(1) Consent to evaluate.

(a) The LEA shall obtain written parental consent before using any procedures selectively with an individual child or youth to determine if the child or youth has a disability and needs specially designed instruction and related services.

(b) The consent for initial evaluation shall include information about individual evaluation procedures that will be used selectively with the child or youth in all areas related to the suspected disability.

(c) The consent for initial evaluation shall explain that the full and individual evaluation information will be used to determine:

1. If the child or youth has a disability; and

2. The extent and nature of the specially designed instruction and related services the child or youth may need in order to receive a free appropriate public education.

(d) The consent shall list the records (if any) which will be released and to whom.

(2) Consent for placement.

(a) The LEA shall obtain written informed parental consent prior to the initial provision of specially designed instruction and related services.

(b) If a child or youth was receiving specially designed instruction and related services in another LEA within the Commonwealth and enrolls, the enrolling LEA shall implement the IEP and placement from the previous LEA until such time as the IEP is revised, if necessary.

(3) Consent shall not be used as a condition to continuing to provide specially designed instruction and related services for a child or youth with disabilities.

(4) Denial or revocation of consent.

(a) The LEA shall include in its notice to parents the following:

1. Permission is voluntary;

2. Parents' right to deny permission for initial evaluation and placement;

3. Parents' right to revoke permission at any time.

(b) If the LEA disagrees with the parents' denial or revocation, a due process hearing shall be requested.

Section 8. Independent Evaluation. Independent evaluation shall be an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child or youth in question.

(1) If a parent disagrees with an evaluation obtained by the LEA, the parent shall have the right to obtain an independent educational evaluation of the child or youth at public expense. An LEA may initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still shall have the right to an independent educational evaluation, but not at public expense.

(2) If the parent requests, the LEA shall give the parent information about where an independent educational evaluation may be obtained.

(3) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(a) Shall be considered by the LEA in any decision made with respect to the provision of a free appropriate public education to the child or youth; and

(b) May be presented as evidence at a due process hearing regarding the child or youth.

(4) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be at public expense.

(5) Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the LEA uses when it initiates an evaluation.

Section 9. Representation. (1) The LEA shall assure that each child or youth is represented by a parent at all decisionmaking points in the identification, evaluation, and placement process and relative to a free appropriate public education.

(2) Determination of representation.

(a) No later than at the time of referral, the LEA shall determine if the child or youth is:

1. Emancipated and, therefore, represents himself in educational decisionmaking; or

2. To be represented by an adult, such as a parent, a guardian, a person acting as a parent, a surrogate parent, or a permanent foster parent.

(b) The LEA shall verify the location, legal status and availability of parents or guardians prior to taking any action with regard to the identification, evaluation or educational placement of a child or youth.

Section 10. Surrogate Parent. The LEA shall protect the rights of a child or youth by assigning a surrogate parent.

(1) The LEA shall protect the rights of a child or youth when:

(a) No parent can be identified;

(b) The LEA, after reasonable efforts, cannot determine the whereabouts of a parent; and

(c) The child is a ward of the state. The child or youth is a ward of the state when all parental rights have been terminated by a court of competent jurisdiction.

(2) The LEA shall not assign a surrogate to an emancipated individual.

(3) The LEA shall terminate a surrogate parent assignment when the parent becomes known or is located or when the youth becomes emancipated.

(4) The LEA shall establish procedures for the selection and assignment of surrogate parents which include:

(a) A method of determining whether a child needs a surrogate parent;

(b) A method for recruiting persons to serve as a surrogate parent;

(c) A method for selecting and assigning a surrogate parent;

(d) Criteria for selection of a surrogate which ensure that the person selected as surrogate:

1. Has no conflict of interest;

2. Has knowledge and skills to represent the child or youth; and

3. Is not an employee of the public agency involved in the education or care of the child or youth.

(e) A surrogate parent shall not be considered an employee of the LEA solely because he is paid by the LEA to serve as a surrogate parent.

(5) The LEA shall provide training to persons selected as surrogate parents to assure these persons have sufficient knowledge and skills to effectively represent the child or youth.

(6) The LEA shall select persons as surrogate parents who:

(a) Have no conflicting vested interest;

(b) Are committed to personally and thoroughly acquainting themselves with the child and his needs;

(c) Are familiar with the educational system within the state;

(d) Are readily accessible to the child;

(e) Are age eighteen (18) or older; and

(f) Are a United States citizen.

(7) The LEA shall assign a surrogate parent within fifteen (15) school days after determining the need and shall acknowledge the authority of the surrogate to represent the child in all matters relating to the identification, evaluation, and educational placement of the child and provision of a free appropriate public education.

(8) The LEA shall recognize the surrogate parent as the one to exercise all of the educational rights, responsibilities and authorities as a parent of the child or youth, such as the rights to:

(a) Receive notice of proposed or refused actions;

(b) Provide or deny consent;

(c) Participate in ARC meetings as the parent;

(d) Protections under confidentiality;

(e) Request an independent educational evaluation of the child or youth; and

(f) Request an impartial due process hearing and appeal.

Section 11. Due Process Hearings. A parent or LEA may initiate a hearing on any matter concerning the identification, evaluation, placement or the provision of a free appropriate public education.

(1) Notice of hearing.

(a) The LEA shall inform the parents of:

1. The right to request a due process hearing related to disagreements about identification, evaluation, placement or provision of a free appropriate public education;

2. The procedures for requesting a due process hearing.

(b) Requests for hearings may be initiated by the LEA or the parent and shall:

1. Be submitted to the Director, Division of Exceptional Children Services, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601;

2. Be in writing and signed by the LEA representative or the parent; and

3. Clearly state:

a. A summary of the facts regarding the disagreement over which the hearing was requested; and

b. The specific issues the LEA or the parent is requesting the hearing officer to decide.

(c) The facts contained in the hearing request shall establish that the disagreement which exists between the LEA and the parent of the child or youth is related to the identification, evaluation, placement, or the provision of a free appropriate public education to a child or youth.

(d) Any hearing request may be cancelled by the hearing officer upon receipt of written documentation from the party requesting the hearing.

(2) Assignment of a hearing officer.

(a) The Division of Exceptional Children Services shall assign a hearing officer to preside at a due process hearing. Written notification of the assignment shall be provided to the hearing officer, the LEA, and the parent.

(b) Within five (5) calendar days of receipt of notification of the assignment of the hearing officer, the public agency, or the parent shall submit in writing to the Division of Exceptional Children Services reasons for the contention, if any, that the hearing officer would not be impartial. Reasons for dismissal of the hearing officer shall be substantiated prior to the assignment of another hearing officer.

(c) It shall be the responsibility of the Division of Exceptional Children Services to ensure the selection, training, and maintenance of a registry of hearing officers to serve at a due process hearing. Persons to be considered for appointment as impartial hearing officers may come from a variety of working environments, such as public schools, universities and colleges, and outside professional agencies concerned with the education of children and youth with disabilities.

(d) The Division of Exceptional Children Services shall ensure that each public agency maintains a listing of trained individuals and their qualifications from which hearing officer assignments shall be made.

(3) Qualifications of hearing officer.

(a) The competencies of a hearing officer shall include:

1. Minimum of Rank I in education or special education or equivalent degree in law, psychology or counseling;

2. Attendance at hearing officer training; and

3. Conduction of a hearing within the last three (3) years.

(b) The hearing officer assigned shall not be an employee of a public agency which is involved in the education or care of the child.

(c) The hearing officer shall not appear to have vested interest in the outcome of the hearing.

(4) Authority of the hearing officer.

(a) The hearing officer shall regulate the course of proceedings and the conduct of the parties during the proceedings. The hearing officer shall take all steps necessary to conduct a fair and impartial proceeding to avoid delay, and to maintain order.

(b) The hearing officer may schedule a prehearing conference of the hearing officer and parties.

1. Any party may request the hearing officer to schedule a

prehearing. The hearing officer shall decide if a conference is necessary and shall notify all parties.

2. At a prehearing conference, the hearing officer and the parties may consider subjects including:

a. Narrowing and clarifying issues;

b. Assisting the parties in reaching agreements and stipulations; and

c. Clarifying the positions of the parties.

3. A prehearing conference may be conducted by telephone conference call.

4. At a prehearing conference the parties shall be prepared to discuss the subjects listed in subparagraph 2 of this paragraph.

5. At a prehearing conference the hearing officer may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties or may require the parties to do so.

(c) The hearing officer may require parties to state their positions and to provide all or part of the evidence in writing.

(d) The hearing officer may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the hearing officer.

(e) The hearing officer may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(f) The hearing officer may rule on motions and other issues at any stage of the proceedings.

(g) The hearing officer may examine witnesses.

(h) The hearing officer may set reasonable time limits for submission of written documents.

(i) The hearing officer may refuse to consider documents or other submissions if they are not submitted in a timely manner unless good cause is shown.

(j) The hearing officer may interpret applicable statutes and administrative regulations but may not waive them or rule on their validity.

(k) The hearing officer shall give each party an opportunity to be represented by counsel.

(l) The hearing officer shall give each party the right to call as witness individuals with special knowledge or training in the area of disabilities.

(m) The hearing officer or panel shall give each party:

1. An opportunity to present witnesses on the party's behalf; and

2. An opportunity to cross-examine witnesses either orally or with written questions.

(n) The hearing officer shall accept any evidence that he finds is relevant and material to the proceedings and is not unduly repetitious.

(o) Each party shall file with the hearing officer all written motions, briefs, and other documents and shall at the same time, provide a copy to the other parties to the proceedings.

(p) The hearing officer shall monitor timelines to ensure that a decision and order can be rendered within forty-five (45) days of receipt of the request by the Division of Exceptional Children Services.

(q) The hearing officer may extend the time beyond the specified timelines upon good cause.

(r) The hearing officer may dismiss any request for a hearing if it is determined that there is insufficient factual information available to render a decision on the issue raised within the forty-five (45) day timeline. Dismissal under this subsection shall not preclude either party from requesting a later hearing on the same issue when the necessary information has been acquired.

(5) Arrangements prior to the hearing.

(a) Prior to the due process hearing the LEA shall:

1. Inform the parent of any free or low-cost legal and other relevant services available in the area;

2. Schedule within five (5) calendar days of receipt of hearing officer assignment the hearing at a time, date and location convenient for the agency, parent, and hearing officer;

3. Inform the hearing officer of the existing time, date and location of the hearing;

4. At least fourteen (14) calendar days prior to the hearing, provide the hearing officer and the parent with a written chronology of events leading to the hearing;

5. Make arrangements to provide a tape recorder and stenographer for the hearing to ensure a true and accurate record of the hearing is available in a timely manner. A written verbatim record shall be provided to the hearing officer and to the parent upon request;

6. Inform the parent that the hearing will be closed unless requested to be open by the parent or, if the youth is emancipated, upon request of the youth;

7. Inform the parent of the right to have the child or youth present during the proceedings;

8. Notify the parent and the hearing officer in writing of its intent to be represented by legal counsel (if true). The notice shall include the legal counsel's name, address and telephone number;

9. At least seven (7) calendar days prior to the hearing, disclose all pertinent information concerning the hearing to the parents and to the impartial hearing officer, including:

a. The name, title of all witnesses;

b. The general nature of expected testimony; and

c. All documents and records which may be entered as evidence at the hearing.

(b) All information not disclosed prior to the hearing shall become admissible at the discretion of the hearing officer.

(c) Prior to the due process hearing the parent shall:

1. Notify the LEA and the hearing officer in writing of his intent to be represented by legal counsel (if true). The notice shall include the legal counsel's name, address, and telephone number.

2. At least seven (7) calendar days prior to the hearing, disclose all pertinent information concerning the hearing to the LEA and to the impartial hearing officer, including:

a. The name, title of all witnesses;

b. The general nature of expected testimony; and

c. All documents and records which may be entered as evidence at the hearing.

3. All information not disclosed prior to the hearing shall become admissible at the discretion of the hearing officer.

4. Cooperate with the LEA in scheduling a hearing at a time, date and location that is convenient for all parties.

(6) Hearing format.

(a) The hearing officer shall make an introductory statement explaining the format and rules of the hearing request.

(b) The initiating party shall present its opening statement first.

(c) The noninitiating party shall then have the right to make an opening statement.

(d) Following the opening statements, the initiating party shall present its evidence and testimony.

(e) The noninitiating party shall then present its evidence and testimony.

(f) Each witness presented shall be subject to cross-examination by the opposing party.

(g) The noninitiating party shall present its closing statement.

(h) The initiating party shall then present its closing statement.

(i) When closing statements have been completed, the hearing officer shall give both parties copies of the appeal procedure and orally explain how an appeal may be requested. The hearing officer shall summarize the procedures for dissemination of the decision.

(7) Funding hearings. The total costs involved in holding a due process hearing, excluding those caused to be incurred by the parents/child, shall be paid for by the public agency.

(a) The hearing officer shall receive a stipend as determined by the Division of Exceptional Children Services and is commensurate with standard department consultant fees.

(b) All expenses associated with the hearing officer's availability

shall be reimbursed upon submission of receipts. Included in expenses shall be:

1. Mileage to and from the home of the hearing officer consistent with current state mileage reimbursement;
2. Meals during the time away from home;
3. Lodging at a convenient location, if necessary; and
4. Phone, clerical, and other associated costs.

(8) Subpoena. Any party to a hearing shall have the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. Subpoenas may be obtained from the commissioner of education.

(a) Requests for issuance of subpoenas shall be in writing and addressed to the Office of Legal Services. A copy of the request shall also be submitted to the Division Director, Division of Exceptional Children Services.

(b) The subpoenas shall be issued for the named witnesses, and the party requesting the subpoenas shall be responsible for completing them and ensuring proper service.

(c) All costs incurred in compelling the attendance of witnesses, including the cost of service of subpoenas, shall be borne by the party requesting their attendance.

(9) Timelines for the hearing.

(a) No later than forty-five (45) days after the Division of Exceptional Children Services receives a written request, the due process hearing officer's written findings of fact and decision shall be rendered and copies mailed to parties of the action by the hearing officer. A reasonable extension of this time frame may be granted by the impartial due process hearing officer.

(b) At least ten (10) calendar days prior to the hearing, the LEA may make a written offer of settlement to the parents. The LEA shall not submit a copy of this settlement offer to the hearing officer.

(c) No later than seven (7) days prior to the hearing, the hearing officer shall send to the public agency, parent and Division of Exceptional Children Services via certified mail, a letter confirming the date, location and time of the hearing.

(d) No later than fourteen (14) calendar days following receipt of the verbatim transcript, the hearing officer shall send written findings of fact and decisions via certified mail to the LEA and parent, with a copy of the decision to the Division of Exceptional Children Services.

(e) Within fourteen (14) calendar days of rendering a decision and order, the hearing officer shall send all evidence, including tapes and transcripts, to the Division of Exceptional Children Services.

(10) The decision of the hearing officer shall be final unless either party appeals the decision.

Section 12. Exceptional Children Appeals Board. (1) There is hereby established for the Kentucky Department of Education the Exceptional Children Appeals Board. The commissioner of education shall appoint for each appeal filed three (3) persons from the registry of trained hearing and review officers to serve as members and shall designate one (1) as chairperson. The members shall not be employees of a public agency which is involved in the education or care of the child, or an employee of the Department of Education and shall not appear to have a vested interest in the outcome of the appeal. The ECAB shall have the same power and authority as a due process hearing officer.

(2) Any person who is a party to the hearing involving the identification, evaluation, or placement of children or youth with disabilities and who is aggrieved by the order of such hearing, may appeal such order in writing by certified mail to the Exceptional Children Appeals Board within thirty (30) calendar days of the entry of such order. This appeal shall also be submitted to the opposing party.

(a) Within twenty-one (21) calendar days of receipt of the written appeal, the opposing party may file a written response to the appeal, stating the exceptions to the appeal. The response shall be sent by certified mail to the Chairperson, Exceptional Children Appeals Board, Kentucky Department of Education.

(b) Upon receipt of the written appeal, the Division of Exceptional Children Services shall provide a copy of the entire hearing record to the Exceptional Children Appeals Board.

(c) After receipt of the entire hearing record, the Exceptional Children Appeals Board shall conduct an impartial review of the entire record and the written findings of fact and decision to ensure that procedures were consistent with requirements of due process. In any appeal filed, the provisions of Section 11(5)(a)8, (5)(b)2, and (8) of this administrative regulation shall apply.

(d) The Exceptional Children Appeals Board may seek additional evidence if necessary to ensure that the child shall be provided a free appropriate public education. If additional testimony is necessary, a review hearing shall be conducted at a time and place which is reasonably convenient for the parents, LEA and the Exceptional Children Appeals Board.

(e) For good cause, the Exceptional Children Appeals Board, through its chairperson, may grant specific extensions of time beyond the specified timelines.

(f) Upon conclusion of the hearing on appeals, the Exceptional Children Appeals Board shall make an independent decision including findings of fact and conclusions of law.

(g) The Exceptional Children Appeals Board shall ensure that no later than thirty (30) days after the receipt of a written request for a review of the hearing officer's findings of fact and decision in a due process hearing:

1. A final decision is reached in the review; and
2. A copy of the decision is mailed to each of the parties.

(h) The decision of the Exceptional Children Appeals Board shall be final, unless either party initiates a civil action in court.

Section 13. Child Status During Pendency of Administrative or Judicial Proceedings. The LEA ensures that during the pendency of any administrative proceedings or judicial proceedings, the child or youth shall remain in his present educational placement unless the LEA and the parent agree otherwise. If the administrative or judicial proceedings involve an application for initial admission to public school, the child or youth, with the consent of the parent, shall be placed in the LEA program until the completion of all the proceedings.

Section 14. Suspension or Expulsion. The LEA shall ensure that appropriate procedures are followed in the suspension and expulsion of children or youth with disabilities.

(1) Suspension of a child or youth with disabilities for more than ten (10) days during a school year shall constitute a change of educational placement. The ARC shall meet to:

(a) Review placement and make recommendations for continued placement or a change in placement; and

(b) Determine if regular suspension or expulsion procedures apply.

(2) If the suspension is for a minor infraction and no further disciplinary action is planned, then an ARC meeting shall not be required unless requested by the parent or principal or other service providers.

(3) If the LEA considers a suspension that will cumulatively exceed ten (10) days during a school year, parents shall be provided notice of a proposed action and notice of an ARC meeting consistent with Section 5 of this administrative regulation.

(4) When the ARC convenes to consider suspension or expulsion, the ARC shall determine:

(a) If the IEP and placement are appropriate and being fully and correctly implemented; and

(b) Whether the behavior or misconduct is a manifestation of the disability.

(5) If the ARC finds that the IEP or placement are not appropriate or not being fully and correctly implemented, appropriate modifications are determined at the ARC meeting and no further disciplinary action

occurs.

(6) If the ARC finds that the IEP and placement are appropriate and being fully and correctly implemented, then it shall consider whether the behavior or misconduct was a manifestation of the disability.

(7) If the ARC determines that the behavior of a child or youth with disabilities is related to the disability, the child or youth shall not be subject to further suspension or expulsion.

(8) The LEA may seek injunctive relief through the courts if the parent and the other members of the ARC cannot agree upon a placement and the current placement will likely result in injury to the child or youth or to others.

(9) If the ARC determines that the behavior is not related to the disability, the LEA may follow its regular suspension or expulsion procedures; however, educational services for the child or youth shall not be terminated during the period of the expulsion.

(10) If the parent disagrees with the proposed action of the ARC, the parent may request a due process hearing and the child shall remain in his current educational placement during any administrative or judicial proceedings unless the LEA and parent agree otherwise. A full and complete explanation of parental rights shall accompany the notice of the proposed action.

(11) The code of student conduct shall include the guidelines for suspension and expulsion of children and youth with disabilities.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, or suspected of having disabilities, and their parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: No increase over previous regulatory requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No increase over previous regulatory requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Individuals with Disabilities Education Act mandates the committee process, notice and consent requirements, and hearing procedures for students with disabilities.

(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: 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: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR Part 300.500-515.

2. State compliance standards. This administrative regulation addresses the federal mandate that each state education agency ensure that each public agency establish and implement a system of procedural safeguards for students with disabilities.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state education agencies to ensure that each public agency establish and implement a system of procedural safeguards for students with disabilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:190. Evaluation.

RELATES TO: KRS 157.200, 157.360, 158.6451, 160.290, 167.150, 167.170, 34 CFR Part 300, Appendix C, 20 USC 1400-1427

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 167.015

NECESSITY AND FUNCTION: KRS 156.160, 157.220, and 167.015 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards

which local education agencies and state operated schools shall meet in student, program, services, and operational performance and related to special education programs; KRS 157.200, 167.150, and 167.170 establish the statutory framework for special education programs. This administrative regulation establishes requirements related to evaluation of children and youth with disabilities to determine eligibility for specially designed instruction and related services and is necessary to assure uniformity in providing specially designed instruction and related services and to conform with 20 USC 1401 through 1420.

Section 1. Definitions. (1) "Current" means less than one (1) calendar year old.

(2) "Full and individual evaluation" means the collection, analysis, interpretation, and documentation of a variety of evaluation data sources related to the suspected disability, administered selectively with the individual child or youth.

(3) "Native language" means the language normally used by an individual.

(4) "Qualified personnel" means that an individual has met state approved or recognized certification, licensing, registration, or other comparable requirements such as training that apply to the area in which specially designed instruction or related services are provided.

(5) "Referral" means written information about a child or youth, suspected of having a disability, that includes:

(a) Personally identifiable data;

(b) A description of current status including all areas of concern; and

(c) Appropriate instruction, support services and intervention provided for any area of concern that adversely affects educational performance.

(6) "Written behavioral observation" means written documentation of a current pattern of behavior over time, and across settings, including targeted behaviors, as identified by the admissions and release committee (ARC) in the referral, conducted in the environment in which the targeted behaviors occur, and by personnel, other than a child's teacher, specifically trained in observation techniques and methods.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for referral and evaluation. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Referral. If a child or youth is identified as having a suspected disability, the referral source, including but not limited to teachers, parents, and professionals shall complete a written referral that meets the following criteria:

(1) The written referral shall include:

(a) Personally identifiable data including name, parent, address, and Social Security or student number;

(b) Current status, including all areas of concern with regard to the child or youth in relation to his similar age peers;

(c) Current screening data collected according to the LEA's board policies and procedures as required under KRS 158.6451 and 704 KAR 3:006; and

(d) A summary of appropriate instruction, support services and interventions that have been provided and proven ineffective for any area of concern that adversely affects educational performance.

(2) After receipt and review of the referral, the admissions and release committee (ARC) shall analyze and determine if sufficient information is available for initiating a full and individual evaluation.

(a) If referral information is incomplete, additional information shall be collected.

(b) If referral information is complete, the ARC shall determine the need to initiate a full and individual evaluation.

(c) If the referral information does not support a suspected disability and the need for a full and individual evaluation, the ARC shall document the basis for the decision.

Section 4. Evaluation. (1) The ARC shall ensure that:

(a) The child or youth is assessed in all areas of concern related to a suspected disability at no cost to parents;

(b) All validity issues identified by failed screenings are addressed prior to evaluation;

(c) Evaluations are selected and administered so as not to be racially or culturally discriminatory;

(d) Specially designed instruction or related services shall not be provided to any child or youth before a full and individual evaluation is completed and eligibility determined;

(e) The full and individual evaluation is conducted by a multidisciplinary team;

(f) The multidisciplinary team includes at least one (1) teacher with teacher certification in the area of the suspected disability or disabilities or qualified personnel with knowledge in the area of the suspected disability or disabilities;

(g) Full and individual evaluations are conducted by qualified personnel who shall properly administer the evaluation and interpret the results;

(h) Tests and procedures are:

1. Validated for the specified purpose for which they are used;

2. Tailored to assess specific areas of educational need;

3. Designed to provide more than a single general intelligence quotient;

4. Administered in conformance with the instructions provided by the publisher; and

5. Administered in the native language or other mode of communication of the child or youth unless not clearly feasible to do so.

(i) The sole criterion for determining an appropriate educational program is not based on a single procedure;

(j) Each ARC member has access to the evaluation information to be used for making educational decisions prior to any ARC meeting;

(k) If computer-assisted reports are used, the program allows input of individually relevant data beyond personally identifiable data;

(l) Parents of a child or youth have the right to obtain an independent educational evaluation;

(m) Results from group administered tests or procedures are not used to determine eligibility;

(n) Any current evaluation information may be a legitimate substitute for another evaluation of the same type if the information obtained meets the criteria for a full and individual evaluation;

(o) Information about environmental, family, and cultural factors is utilized in the decisionmaking process;

(p) Evaluation documentation includes a comparison and interpretation of the results of all assessments to be written in language understandable to the ARC members; and

(q) When a test is administered to a child or youth with impaired sensory, manual, or speaking skills, the test results accurately reflect the aptitude or achievement level of the child or youth or whatever other factors the test purports to measure, rather than reflecting impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

(2) Using the referral information, the ARC shall determine additional information needed for a full and individual evaluation in all areas related to the suspected disability including:

(a) Physical functioning which includes vision, hearing, health, motor abilities and speech mechanism;

(b) Communication functioning which includes speech sound production and use, receptive and expressive language, fluency, voice, and, as appropriate, augmentative or alternative communication;

(c) Cognitive functioning which includes an appraisal of aptitude and the mental processes by which an individual applies knowledge,

thinks and solves problems;

(d) Social competence which includes adaptive behaviors and social skills which enable a child or youth to meet environmental demands and to assume responsibility for his own and other's welfare;

(e) Academic performance over time which includes an educational history of the level of development, mastery or achievement and application of skills and knowledge within the following academic areas as selected by the ARC:

1. Basic and content reading;
2. Reading comprehension;
3. Mathematics calculation, reasoning and application;
4. Written expression;
5. Oral expression;
6. Listening comprehension;
7. Learning preference issues such as learning style, strategies;
8. Effect of the disability on acquisition, development, mastery and application of academic skills;

(f) Vocational functioning which consists of a combination of formal and informal assessment activities and includes consideration of, as appropriate:

1. General work behaviors;
2. Following directions;
3. Working independently or with job supports;
4. Job preferences or interests;
5. Dexterity;
6. Abilities;
7. Interpersonal relationships and socialization; and
8. Related work skills;

(g) Recreation and leisure functioning includes use of free time, maintenance of physical fitness, use of generic community recreation facilities and resources and degree of social involvement, as appropriate; and

(h) Environmental, family and cultural factors which include:

1. Relationship with family;
2. Relationship with peers;
3. Family's dominant language;
4. Cultural influences;
5. Expectations of the parents for the child or youth in the home, school, and community environments;
6. Services received in the community; and
7. Economic influences.

(3) The LEA shall conduct a full and individual evaluation or reevaluation using systematic data collection procedures including, but not limited to:

(a) Norm-referenced and performance based testing;
(b) Behavior observations;
(c) Interviews; and
(d) Rating scales.

Section 5. Reevaluation. (1) The LEA shall conduct a reevaluation of a child or youth with a disability on or before the third anniversary of the meeting when the ARC determined eligibility, or more frequently if conditions warrant, or at the request of the parent or teacher.

(2) The reevaluation shall be conducted for all areas related to the disability, as determined by the ARC.

(3) The reevaluation shall include:

(a) A review and update of the current status of the child or youth;

(b) A review of progress data related to individual education program (IEP); and

(c) Other assessments as needed.

(4) Readministration of an individual intelligence test may not be required if previous results of cognitive functioning assessment have been consistent over time, or have documented cognitive functioning as average or above average. If an individual intelligence test is not administered, then:

(a) Documentation of the reason the test was not given shall be provided by the ARC; and

(b) The ARC shall determine if the information presented on the cognitive ability of the child or youth is sufficient for determining a disability.

Section 6. Use of Evaluation Information. (1) The ARC shall use the full and individual evaluation results to:

(a) Determine if the child or youth has a disability; and

(b) Determine if the disability adversely affects the educational performance of the child or youth to the extent the child or youth needs specially designed instruction and related services in order to attain the capacities and goals required by KRS 158.645 and 158.6451.

(2) If the ARC determines that the child or youth is eligible for specially designed instruction and related services, it shall use the information from the referral and evaluation or reevaluation to develop the IEP and plan for transition.

(3) The ARC shall use results from reevaluation to determine:

(a) If the child or youth still has a disability; and

(b) If the disability continues to adversely affect the educational performance of the child or youth to the extent that the child or youth needs specially designed instruction and related services.

(4) If the ARC determines that the child or youth continues to be eligible for specially designed instruction and related services it shall use the information from the re-evaluation to revise the IEP and plan for transition.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, or suspected of having disabilities, and their parents.

(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

effect upon competition: None

(b) Reporting and paperwork requirements: Paperwork and reporting requirements are not changed by this administrative regulation. Documentation is maintained for compliance with the federal requirements established in 1977 that a child or youth be evaluated in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, aptitude and achievement tests, teacher recommendations, social or cultural background, and adaptive behavior.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Local school districts should have more appropriate local policies and procedures for compliance with the administrative regulation which will require less staff time in reviewing, monitoring, training, and providing technical assistance for compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and follow-up to corrective action plans.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1411(d), 1412(2)(C), 1414(a)(1)(A); 34 CFR Part 300.

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that all children residing in the state who are disabled, regardless of the severity of their disabilities, and who are in need of specially designed instruction and related services, are evaluated and that documentation is maintained that enables the State and U.S. Secretary of Education to audit the accuracy of the child count.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for evaluation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents, eligible students, or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents, eligible students, or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:200. Eligibility of children and youth with disabilities.

RELATES TO: KRS 157.200, 158.6451, 160.290, 167.150, 167.170, 34 CFR Part 300, Appendix C, 20 USC 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 167.015

NECESSITY AND FUNCTION: KRS 156.160, 157.220, and 167.015 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local education agencies and state operated schools shall meet in student, program, services, and operational performance and related to special education programs; KRS 157.200, 167.150, 167.170 establish the statutory framework for special education programs. This administrative regulation establishes requirements related to eligibility and is necessary to assure uniformity in eligibility for specially designed instruction and related services and to conform with 20 USC 1401 and 1420.

Section 1. Definitions. (1) "Adversely affects" means that the progress of the child or youth is impeded by a disability to the extent that educational performance is significantly and consistently below the level of similar age peers to such a degree that specially designed instruction and related services are needed by the child or youth.

(2) "Educational performance" means acquiring, developing, understanding, or applying knowledge or skills needed for academic performance or social competence.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for determining eligibility of any child or youth with disabilities residing within the jurisdiction of the LEA to receive specially designed instruction and related services. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Eligibility Determination. (1) After a full and individual evaluation is completed, the admissions and release committee (ARC) shall compare and analyze all evaluation information and document interpretation of the results to verify that:

(a) The child or youth has a disability; and

(b) The disability adversely affects educational performance.

(2) Evaluation information shall be sufficient if:

(a) A complete referral verifies a concern persists after appropriate support and interventions have been provided;

(b) Multiple nondiscriminatory methods or measures were used to evaluate the areas specified by the ARC, including valid and reliable norm-referenced and performance based testing, behavior observations, interviews, and rating scales;

(c) Data on family, environmental, and cultural factors is available for analysis to determine the impact on educational performance; and

(d) Referral data and additional information collected documents the current status of the child or youth in relation to the following areas:

1. Physical functioning;
2. Communication functioning;
3. Cognitive functioning;
4. Social competence;
5. Academic performance;
6. Vocational functioning; and
7. Recreation and leisure functioning.

(3) If the ARC determines that the evaluation information available is not sufficient to verify that the child or youth is disabled and needs specially designed instruction and related services, the ARC shall obtain additional evaluation information.

(4) If the child or youth meets the eligibility criteria in disability area as specified in this administrative regulation, the ARC shall develop an IEP. The ARC shall use results of all evaluations to determine the extent and nature of specially designed instruction and related services to be provided.

(5) The ARC shall specify the primary disability in the presence of any other disability, except as provided in this administrative regulation.

Section 4. Autism. (1) The ARC shall determine that a child or youth has the disability of autism as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) Deficits in developing and using verbal or nonverbal communication systems for receptive or expressive language;

(b) Deficits in social interaction (participation) including social cues, emotion expression, personal relationships, and reciprocal (contributing) interaction;

(c) Repetitive ritualistic behavioral patterns including insistence on following routines and a persistent preoccupation and attachment to objects; and

(d) Abnormal responses to environmental stimuli.

(2) The ARC shall document that the deficits are not primarily the result of one (1) of the following: impaired hearing, physical disability, emotional-behavioral disability, specific learning disability, mental disability, visual disability, deafness and blindness, or traumatic brain injury.

(3) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 5. Communication Disorder. (1) An ARC shall determine that a child or youth has a communication disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies that:

(a) The child or youth has a speech or language impairment in one (1) or more of the following areas: speech sound production and use, receptive language, expressive language, fluency and voice. For children or youth with limited or no use of oral language, a communication evaluation shall include a determination of the extent to which augmentative or alternative communication is currently utilized or needed;

(b) The performance of the child or youth is at least one and one-third (1 1/3) standard deviations below the mean using standardized measures; and

(c) The child or youth does not have a communication difference caused by use of a dialect, English as second language (ESL) or ability to speak or understand two (2) or more languages in the absence of a disorder in communication.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 6. Deaf-blind. (1) An ARC shall determine that a child or youth has the disability of deaf-blind as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) A hearing loss as follows:

1. A conductive, sensori-neural or mixed hearing loss of fifty (50) dB through the speech frequencies of 500, 1000, and 2000 Hz in the better ear, even with a hearing aid;

2. Cortical deafness;

3. A medically diagnosed condition of progressive hearing loss; or

4. A functional hearing loss; and

(b) A visual impairment as follows:

1. Visual acuity even with prescribed lenses is 20/70 or worse in the better eye;

2. Visual acuity is better than 20/70 and the child or youth has any of the following conditions:

a. A medically diagnosed progressive loss of vision;

b. Visual field of twenty (20) degrees or worse;

c. A medically diagnosed condition of cortical blindness; or

d. A loss of functional vision; and

(c) Such severe communication, developmental, and learning needs that the child or youth cannot benefit from programs designed solely for children and youth with visual impairments or hearing impairments.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 7. Emotional-behavioral Disability. (1) An ARC shall determine that a child or youth has an emotional-behavioral disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies each of the following:

(a) When compared to the appropriate peer and cultural reference group, the child or youth continues to exhibit one (1) or both of the following to a marked degree, across settings, and over a long period of time, even after appropriate instructional and social-emotional interventions have been provided:

1. Severe deficits in social competence which impair interpersonal relationships with adults or peers; or

2. Severe deficits in academic performance which are not solely the result of intellectual, sensory, or other health factors, but are related to the social-emotional problems of the child or youth.

(b) The severe deficit areas identified in social competence or academic performance are documented by a compilation of behavioral and intervention data which address social interactions and academically engaged time;

(c) The child or youth's educational performance, when compared to peer and cultural norms, is adversely affected in one (1) or more of the following areas:

1. Cognitive functioning including the manner in which the child or youth acquires knowledge, thinks, and solves problems;

2. Academic performance including the extent of deficit in the development, mastery, and application of skills and knowledge;

3. Social competence including the extent of deficit in social skills or adaptive behavior which impair personal relationships with peers or adults and clearly indicates the behavior of the child or youth deviates from the standards for the appropriate peer and cultural reference group; and

(d) The deficit is not solely the result of:

1. A primary speech or language disability;

2. Cultural or ethnic factors.

Section 8. Hearing Impairment. (1) An ARC shall determine that the child or youth has a hearing impairment as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies that:

(a) A hearing loss of twenty-five (25) dB or greater exists through the speech frequencies of 500, 1000, and 2000 Hz in the better ear; and

(b) Deficits exist in processing linguistic information through

hearing.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 9. Mental Disability. (1) An ARC shall determine that the child or youth has a mental disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) Mild mental disability in which:

1. Cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean;

2. Adaptive behavior deficit is at least one (1) standard deviation below the mean; and

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.

(b) Functional mental disability in which:

1. Cognitive functioning is at least three (3) or more standard deviations below the mean;

2. Adaptive behavior deficits are at least two (2) or more standard deviations below the mean; and

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 10. Multiple Disability. (1) An ARC shall determine that the child or youth has a multiple disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) A combination of two (2) or more of the following disabilities according to the criteria in this administrative regulation: hearing impairment, physical or orthopedic disability, other health impaired, emotional-behavioral disability, mental disability, specific learning disabilities, traumatic brain injury, visual impairment, or autism;

(b) The disability is not a combination of deafness and blindness or communication disorder and another disability.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 11. Other Health Impaired. (1) The ARC shall determine that a child or youth has the disability of other health impaired as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) A severe health impairment exists including chronic or acute health problems such as heart condition, tuberculosis, sickle cell anemia, hemophilia, epilepsy, rheumatic fever, nephritis, asthma, lead poisoning, leukemia, diabetes, or acquired immune deficiency syndrome; and

(b) The health impairment limits the strength, vitality, or alertness of the child or youth.

(2) A current educationally relevant medical evaluation shall be completed by a licensed physician including:

(a) Verification of the health impairment including the diagnosis and the nature of the impairment;

(b) How the health impairment adversely affects the strength, vitality, or alertness of the child or youth and may adversely affect educational performance; and

(c) Recommendations related to the type and extent of services appropriate for the child or youth including environmental modifications and limitations of the child or youth.

(3) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 12. Orthopedic Impairment or Physically Disabled. (1) An ARC shall determine that the child or youth has an orthopedic impairment or a physical disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies the existence of severe orthopedic impairment as caused by congenital anomaly, disease, injury or accident.

(2) A current educationally relevant medical evaluation shall be completed by a licensed physician including:

(a) Verification of a severe orthopedic or physical impairment including the diagnosis and nature of the impairment;

(b) How the impairment may adversely affect the educational performance of the child or youth in such areas as fine and gross motor, locomotion, physical education, and academic performance; and

(c) Recommendations related to type and extent of services needed by the child or youth including environmental modifications and limitations of the child or youth.

(3) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 13. Specific Learning Disabilities. (1) Using formulas and procedures established by the Department of Education, an ARC shall determine that a child or youth has a specific learning disability as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) The child or youth does not achieve commensurate with his age and ability levels when provided with age and ability level appropriate learning experiences in one (1) of the following seven (7) areas listed in paragraph (b) of this subsection;

(b) A severe discrepancy exists between academic performance and cognitive aptitude in one (1) of the following seven (7) areas:

1. Oral expression, which involves the ability to communicate using spoken language including semantics, pragmatics, and syntax;

2. Listening comprehension which involves the process of translating spoken words into meaning;

3. Written expressions which involves the communication of ideas to various audiences for a variety of purposes, the use of grammar and appropriate punctuation, and the processes of planning, translation, and reviewing;

4. Basic reading skills which includes perception, decoding and word recognition;

5. Reading comprehension which includes literal and inferential comprehension, and monitoring of comprehension;

6. Mathematics calculation which includes addition, subtraction, multiplication and division; or

7. Mathematics reasoning which includes the processes of translation, problem representation and integration, solution planning, monitoring, and execution.

(c) An academic processing deficit exists in the normal sequence of acquiring, developing, understanding, organizing, manipulating, retrieving or responding to information across a variety of settings; and

(d) The specific learning disability is not primarily the result of a visual, hearing, or motor disability, mental disability, emotional-behavioral disability, or environmental, cultural or economic differences

(2) If social competence evaluation data indicates the impact of a specific learning disability on one (1) or more nonacademic areas or social competence including those adaptive behaviors critical to

independent functioning and social responsibility, the ARC shall include appropriate educational planning for those areas of social competence on the IEP.

(3) The ARC shall prepare a written report of the results of the evaluation which includes:

(a) If the individual has a specific learning disability and the adverse affect on educational performance;

(b) The basis for making the determination;

(c) The relevant behavior, noted during behavior observations;

(d) The relationship of that behavior to the academic performance of the child or youth;

(e) The educationally relevant medical findings, if any;

(f) Whether a severe discrepancy between the achievement and ability exists that is not correctable without specially designed instruction and related services; and

(g) The determination of the team concerning environmental, cultural, or economic difference.

(4) Each member of the ARC shall certify in writing if the report reflects his conclusion. If it does not reflect his conclusion, the member shall submit a separate statement presenting and supporting his conclusions.

(5) Following a reevaluation, the severe discrepancy between academic performance and cognitive aptitude in one (1) of the seven (7) areas in subsection (1)(b) of this section is not a requirement for continuing eligibility.

(6) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 14. Traumatic Brain Injury. (1) The ARC shall determine that a child or youth has a disability of a traumatic brain injury as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple setting verifies severe deficits in at least one (1) or more of the following areas:

(a) Receptive and expressive oral and written language including pragmatics;

(b) Memory including deficits in acquisition and retention of new learning or retrieval of previously learning information;

(c) Perceptual skills;

(d) Attention, alertness, and concentration;

(e) Ability to respond to stimuli ranging from noninitiation of activity to perseverance to impulsivity;

(f) Ability to monitor one's own behavior;

(g) Social competence including social-emotional status; or

(h) Cognitive functioning.

(2) A current educationally relevant medical statement completed by a licensed physician verifies the existence of a traumatic brain injury and specifying the diagnosis and extent of injury.

(3) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

Section 15. Visual Impairment. (1) An ARC shall determine that the child or youth has the disability of visual impairment as defined in KRS 157.200 and is eligible for specially designed instruction and related services if evaluation information collected across multiple settings verifies:

(a) The visual acuity even with prescribed lenses is 20/70 or worse in the better eye; or

(b) The visual acuity is better than 20/70, and the child has any of the following conditions:

1. A medically diagnosed progressive loss of vision;
2. A visual field of twenty (20) degrees or worse;
3. A medically diagnosed condition of cortical blindness; or
4. A loss of functional vision.

(c) The child or youth requires specialized materials, instruction in orientation and mobility, braille, visual efficiency, or tactile exploration.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, or suspected of having disabilities, and their parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: Paperwork and reporting requirements are not changed by this administrative regulation. Documentation is maintained for compliance with the federal requirements established in 1977 that a child or youth be determined to be eligible to be counted for funding under Part B under the Individuals with Disabilities Education Act, i.e., have a disability and need specially designed instruction and related services. Despite the creation of two new categories (autism and traumatic brain injury) paperwork requirements should not increase. Students with autism and TBI were previously classified under a different category.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: Local school districts should have more appropriate local policies and procedures

for compliance with the administrative regulation which will require less staff time in reviewing, monitoring, training, and providing technical assistance for compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and follow-up to corrective action plans.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1401(1)(1), 1411(d), 1412(2)(C), 1414(a)(1)(A), 34 CFR Part 300.

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that a child or youth meets eligibility requirements to be counted for funding under Part B of the Individuals with Disabilities Education Act, i.e., have a disability and need specially designed instruction and related services.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for determining if a child or youth has a disability and needs specially designed instruction and related services and that documentation is maintained that enables the State and U.S. Secretary of Education to audit the accuracy of the child count.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate only provides definitions for the various categories of handicapping conditions. States must provide specific eligibility requirements in order to assure that students are not misclassified.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate only provides definitions for the various categories of handicapping conditions. States must provide specific eligibility requirements in order to assure that students are not misclassified.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:210. Individual education programs.

RELATES TO: KRS 157.200, 158.281, 158.282, 158.6451, 160.290, 167.150, 167.170, 34 CFR Part 300, Appendix C, 20 USC 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 167.015

NECESSITY AND FUNCTION: KRS 156.160, 157.220 and 167.015 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local education agencies and state operated schools shall meet in student, program, services, and operational performance and related to special education programs; KRS 157.200, 167.150, and 167.170 establish the statutory framework for special education programs. This administrative regulation establishes requirements related to individual education programs and is necessary to assure uniformity in providing specially designed instruction and related services and to conform with 20 USC 1401 through 1420.

Section 1. Definitions. (1) "Evaluation procedures" means a systematic way of collecting and comparing data to measure achievement of short-term instructional objectives.

(2) "Individual education program" (IEP) means a written plan of action with required content which:

(a) Commits resources needed by a child or youth with a disability;

(b) Is developed by an admissions and release committee (ARC) to meet the specially designed instruction and related services needs of a child or youth with a disability; and

(c) Is implemented based on instructional planning.

(3) "Objective criteria" means a fair measure or test, stated in each short-term instructional objective, which shall be used by an ARC to judge achievement of the objective.

(4) "Participation in the regular education program" means time spent in both academic and nonacademic activities in the regular education environment with children and youth who do not have disabilities.

(5) "Related services" means transportation and developmental, supportive, or corrective services which are needed by a child or youth with a disability to benefit from specially designed instruction. The term includes:

(a) Early identification and assessment of disabling conditions and providing services to minimize the effects of the conditions; and

(b) Assistive technology devices and services.

(6) "Short-term instructional objectives" means measurable, intermediate steps between the present level of performance of the child or youth and the annual goals established for the child or youth. Short-term instructional objectives:

(a) Are milestones for measuring progress toward meeting annual goals;

(b) Are written for each major component of the annual goal; and

(c) Address several periods of time within a twelve (12) month period.

(7) "Specially designed instruction" means modifications or alterations in instructional methods, techniques, materials, media, or content, including physical and environmental adaptations, that are unique or different from those used with most or all of the children or youth of the same or similar age, but which are required for a child or youth with a disability to meet IEP goals and objectives. The term includes instructional services and community experiences needed to meet transition needs and assistive technology devices and services.

(8) "Transition services" means a coordinated set of activities for a youth, designed within an outcome-oriented process, which promotes movement from school to postschool activities including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board-approved policies and procedures in operation for development, implementation, review, revision, and evaluation of an IEP. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. (1) Admissions and Release Committee (ARC) Responsibilities. An ARC shall be responsible for the development, implementation, monitoring, review, revision, and evaluation of the IEP for each child or youth identified as having a disability and needing specially designed instruction and related services. Each ARC shall gather and review information to determine the status of a child or youth with a disability with regard to the IEP and shall ensure that progress data for the child or youth are maintained.

(2) Each ARC shall review progress data at regular intervals on the established review dates and at least annually to determine the changes are needed in the IEP.

(3) When the IEP is developed, the ARC shall identify persons responsible for collecting and maintaining progress information.

(4) Each ARC shall meet to complete an IEP document within thirty (30) calendar days after the ARC determines that a child or youth needs specially designed instruction and related services. The IEP may be completed at the ARC meeting when eligibility is determined.

(5) The IEP shall be developed during an ARC meeting to ensure input from all members.

(a) In developing, reviewing, or revising the IEP, the ARC shall ensure that at least one (1) meeting is conducted during which all required components of the IEP shall be discussed.

(b) If ARC members come prepared with information related to their areas of expertise, including evaluation findings, records of progress, statements of present levels of performance, or suggestions for annual goals, short-term instructional objectives, or the kind of specially designed instruction and related services necessary for those goals and objectives, then:

1. The parent shall be informed at the beginning of the meeting that any prepared information is for suggestion only and is open for review and discussion;

2. Each piece of information shall be discussed; and

3. Group decisions shall be the basis for including information in the written IEP document.

(c) All decisions recorded on the final IEP document shall be made by the ARC as a group and not by one (1) individual.

(6) The LEA shall provide a copy of the IEP to the parent.

Section 4. Content of an IEP. For each child and youth with a disability who is determined to need specially designed instruction and related services, an ARC shall develop an IEP which shall include:

(1) Present level of performance.

(a) Present level of performance shall be a descriptive statement, written in measurable, objective terms, of the current level of developmental, educational, and behavioral performance based on multidisciplinary evaluation results. The statement shall include the performance level or status of each of the following:

1. Physical functioning;
2. Communication functioning;
3. Cognitive functioning;
4. Social competence;
5. Academic performance;
6. Vocational functioning; and
7. Recreation and leisure functioning.

(b) The impact of the disability on educational performance shall be stated including the effect of the disability on transition and on achievement of the student capacities and goals identified in KRS 158.645 and 158.6451, respectively.

(c) A categorical label such as deaf, blind, or learning disabled shall not be substituted for a description of the present level of performance of a child or youth.

(d) If test scores are used, then the meaning of the scores shall be stated and explained.

(2) Annual goals. Each annual goal shall:

(a) Directly relate to an area of need which requires special intervention as described in the present level of performance and shall relate to child or youth evaluation results;

(b) Include the educational performance that can be reasonably anticipated within a twelve month period; and

(c) Set parameters for short term objectives by stating a positive, future verb phrase and the skills in one (1) instructional area.

(3) Short-term instructional objectives. Short-term instructional objectives shall:

(a) Provide guidelines for instructional planning at the implementer level which:

1. Set the direction to be taken by implementers of the IEP; and

2. Serve as the basis for developing detailed instructional plans for the child or youth;

(b) Be based on the individual needs of each child or youth, and for each youth take into account:

1. The youth's preferences; and

2. Development of employment and other postschool adult living skills;

(c) Use words describing behaviors that can be measured or counted; and

(d) Contain the following:

1. The behavior the child or youth is expected to perform to demonstrate mastery or achievement of the objective;

2. The circumstances or conditions under which performance of the objective is to be evaluated. Circumstances shall include what, where, and when, as well as how the child or youth will demonstrate mastery and when progress will be measured, specified by a time frame established in the objective; and

3. The criteria or level at which the child or youth is expected to perform to consider the objective mastered. Criteria shall include the rapidity, accuracy, and frequency of the child or youth's performance or the number, percentage, or proportion of correct responses needed to demonstrate mastery.

(4) Specially designed instruction and related services.

(a) Specially designed instruction shall:

1. Describe what will be provided for the child or youth to meet each short term objective;

2. Include, if needed, information about specially designed vocational education and physical education;

3. Include services which relate to the goals and objectives specified;

4. Not describe the place where services will be provided; and

5. Not include categorical classrooms or program plans as a substitute for a description of the services needed.

(b) Related services shall:

1. Relate directly to the specially designed instruction needed for the child or youth to achieve IEP objectives and directly affect acquisition of essential skills or information;

2. Be necessary for the child or youth to benefit from specially designed instruction;

3. Be described by the type and nature of each service; and

4. Not be needed solely for aesthetic or medical reasons.

(c) Needed transition services.

1. Services to address transition needs, described in present level of performance, goals and objectives, shall be included for each youth with a disability beginning no later than age sixteen (16) and continuing until the youth no longer needs specially designed instruction and related services; or if determined appropriate by an ARC, beginning at age fourteen (14), or younger, and continuing until the youth no longer needs specially designed instruction and related services.

2. Services to address transition needs before the youth leaves the school setting shall include, when appropriate, a statement of the interagency responsibilities or linkages, or both.

3. If the ARC determines transition services are not needed, the IEP shall include a statement to that effect and the basis upon which the determination was made.

(5) Extent of participation in the regular education program. The description of participation in the regular education program shall include:

(a) Program level;

(b) Academic and nonacademic activities in which the child or youth will participate:

1. Without modifications;

2. With modifications (supplementary aids and services); and

3. With specially designed instruction; and

(c) The amount of time for participation.

(6) Projected dates for initiation of services and anticipated duration of the specified services.

(a) Projected dates shall include the month and year when each specially designed instructional service and each related service listed on the IEP shall begin.

(b) Anticipated duration shall include the amount of time in minutes per day or week the child or youth shall spend receiving each particular service, and the month and year the service is anticipated to end.

(7) Appropriate objective criteria and evaluation procedures. Appropriate objective criteria shall be stated in the criteria of each short-term instructional objective. Evaluation procedures shall be stated in the circumstances of each short-term instructional objective.

(8) Schedule for determining, on at least an annual basis, if the goals and short-term instructional objectives are being achieved. A schedule shall include a date, within one (1) calendar year of the date of the meeting where the IEP is finalized, to determine if goals and short-term objectives have been achieved.

(9) Implementer. The person assigned responsibility for implementing each short-term instructional objective shall be specified by job title, and at least one (1) person assigned to each short-term instructional objective shall be qualified to deliver instruction.

Section 5. LEA Responsibility for All Services. Each ARC shall include on each IEP all specially designed instruction and related services needed by a child or youth with a disability even when the services are not currently or directly available from the LEA. This shall include expansion or creation of services within the LEA, contractual arrangements, or use of other resources available to provide the services.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, and their parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: The addition of transition statements to the IEP is required under the Individuals with Disabilities Education Act. Paperwork in the development of the IEP will change in appearance and composition, but not in the breadth of requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Less employee time will be spent in compliance and monitoring.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The necessity for enforcement of federal IEP requirements mandated their inclusion in regulation.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments.

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1401(19), 1401(20), 1414(a)(5); 34 CFR Part 300.

2. State compliance standards. This regulation defines the requirement of Individual Education Plans. This regulation requires each local education agency to have board approved policies and procedures in place for implementation of Individual Education Plans for each child or youth with a disability.

3. Minimum or uniform standards contained in the federal mandate. 344 CFR Part 300.130 requires state agencies to mandate that local education agencies maintain records of Individual Education Plans for each child or youth with a disability as defined in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does require that Individual Education Plans include implementers for each goal and objective.

5. Justification for the imposition of the stricter standard, or

additional or different responsibilities or requirements. The requirement that Individual Education Plans include the title of the implementer for each objective has been in effect since 1981 and assists the local education agency in clarifying the duties of personnel and in monitoring their obligations to provide the requirement.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:220. Placement in the least restrictive environment.

RELATES TO: KRS 157.200, 158.6451, 160.290, 167.150, 167.170, 34 CFR Part 300, Appendix C, 20 USC 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 167.015

NECESSITY AND FUNCTION: KRS 156.160, 157.220, and 167.015 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local education agencies and state operated schools shall meet in student, program, services, and operational performance and related to special education programs; KRS 157.200, 167.150, and 167.170 establish the statutory framework for special education programs. This administrative regulation establishes requirements related to placement in the least restrictive environment and is necessary to assure uniformity in providing specially designed instruction and related services and to conform with 20 USC 1401 through 1420.

Section 1. Definitions. (1) "Ages out" means a youth with a disability reaches the age beyond the mandated service age for the LEA according to the LEA Board of Education policy.

(2) "Graduates" means a youth with a disability leaves the school system after completing either the established program of study leading to receipt of a diploma or an alternative program of study leading to a certificate of completion.

(3) "Instructional transition" means a change in location or level that the child or youth would make if not disabled. This includes moving from one grade to another or from one organizational level to another.

(4) "Least restrictive environment" means the educational setting in which the child or youth with a disability can learn effectively, based upon unique needs and capabilities, and interact with similar age peers who are not disabled.

(5) "No longer needs specially designed instruction and related services" means a child or youth:

(a) Reaches an educational achievement level which falls within the expected performance range of similar age peers; and

(b) Is able to function in the regular education program without specially designed instruction. This means the educational performance of the child or youth is no longer adversely affected by the disability to the extent that the child or youth needs specially designed instruction; or

(c) No longer has a disability.

(6) "Placement" means where the individual education program (IEP) for an individual child or youth with a disability is implemented.

(7) "Potentially harmful effects on the child or youth or on the quality of services" means any identifiable factors that prevent the child or youth from achieving IEP goals and objectives or interfere with the delivery of specially designed instruction described on the IEP.

(8) "Programmatic transition" means when a child or youth changes from one program to another following a planned, orderly process which eases the child or youth from the current program into a new program. Programmatic transition includes:

(a) Adjustments in classes;

(b) Adjustments in schools or facilities;

(c) Completing early intervention services for infants and toddlers and beginning preschool special education services; or

(d) Completing secondary educational services and beginning postsecondary services or work opportunities.

(9) "Provides an opportunity for interaction" means making arrangements for ongoing participation in academic and nonacademic activities with similar age peers who are not disabled, consistent with the admissions and release committee (ARC) process and the requirements of this administrative regulation.

(10) "Regular education environment" means all classes, schools, facilities, and sites regularly used by children and youth without disabilities (regular classes in preschool, primary, elementary, middle, and secondary schools; libraries; learning centers; playgrounds; lunchrooms; gymnasiums; and community sites identified for job training) and does not include classes, schools and facilities that serve only children and youth who have disabilities.

(11) "Release" means an ARC relinquishes responsibility for the educational program of a child or youth who had been identified as disabled and in need of specially designed instruction and related services.

(12) "Supplementary aids" means such aids as large-print books, braille writers, communication boards, tape recorders, and other assistive technology.

(13) "Supplementary services" means such services as resource or itinerant instructional services, consultation or collaboration services, counseling, physical therapy, interpreters, assistive technology services, and classroom aids.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board-approved policies and procedures in operation for placement in the least restrictive environment. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Continuum of Placement Alternatives. (1) Each LEA shall ensure that the LEA's service delivery system makes available a continuum of alternative placements to meet the specially designed instruction and related services needs of children and youth with disabilities.

(2) The continuum of placement alternatives shall include:

(a) Types of classes:

1. Regular education;
2. Special education; and
3. Vocational education;

(b) Types of schools and facilities:

1. Regular school;
2. Special day school;
3. Residential school;
4. Community;
5. Hospital; and
6. Home.

Section 4. Placement. (1)(a) Placement decisions shall be made by an ARC and shall include persons who are knowledgeable about the continuum of placement alternatives.

(b) Each ARC shall make each placement decision based on the IEP of the child or youth.

(c) The ARC shall make each placement decision based on the continuum of placement alternatives described in Section 3 of this administrative regulation. Regular education classes in a regular school shall be the first alternative considered by an ARC as a place for implementing the IEP of a specific child or youth with an educational disability.

(d) Each ARC shall describe each placement decision in writing. Each placement decision shall be described in terms of types of

classes, and types of schools or facilities.

(e) Each ARC shall ensure that special education classes, separate schooling, or other removal of children and youth with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.

(f) Each ARC shall specify in writing modifications to be made in the regular education environment to implement the IEP including:

1. Changing the physical environment;
2. Using supplementary aids and services;
3. Reorganizing staff patterns;
4. Implementing different modes of instruction;
5. Adapting curricula; and
6. Training personnel in special instructional and behavior management techniques.

(g) If an IEP is to be implemented in a setting other than the regular education environment, the ARC shall describe in writing:

1. The reasons for removal of the child or youth from the regular education environment for any part of the day; and
2. Each placement alternative considered by the ARC, including the reasons for accepting or rejecting each one.

(h) Each ARC shall ensure that the decision regarding the setting in which the IEP is to be implemented shall be made after all parts of the IEP have been completed.

(i) The ARC shall not make placement decisions solely on the basis of:

1. The category of disability of the child or youth;
2. Availability of services;
3. Facility and equipment utilization;
4. Reimbursement or transportation costs;
5. Special design or unique attributes of a facility;
6. Lack of or better qualified staff;
7. Availability of related services;
8. Smaller pupil-teacher ratio;
9. Administrative convenience;
10. Configuration of service delivery; or
11. Parent preference.

(2) Each ARC shall select specific locations by names of schools or facilities for implementing the placement decision for each child or youth with a disability.

(a) The ARC shall select the location where the child or youth would be if not disabled. If other locations are needed to implement the IEP in the placement decided, the ARC shall select locations nearest in travel time to the home of the child or youth.

(b) In selecting locations, the ARC shall identify any potentially harmful effects of the placement on the child or youth or on the quality of services to be provided. The ARC shall specify in writing modifications to be made to compensate for identified harmful effects.

(3) In making a placement decision and selecting locations, the ARC shall ensure requirements in Sections 5, 6 and 7 of this administrative regulation are met.

(4) An ARC shall determine placement in the least restrictive environment for a child or youth with a disability on an annual basis.

(a) At least once each calendar year, each ARC reviews and revises the IEP and determines the educational placement of each child or youth with a disability who is receiving specially designed instruction and related services.

(b) Each ARC shall review all progress and evaluation data and reports to determine and document the degree of progress and achievement toward meeting IEP goals and objectives.

1. Progress and achievement shall be considered adequate when the child or youth is meeting criteria at the rate and level specified in the IEP.

2. Progress and achievement shall be considered inadequate when the child or youth consistently exceeds or fails to meet criteria at the rate and level specified in the IEP.

(5) Each LEA shall arrange for placement in the selected locations as needed to implement the IEP for each child and youth.

Section 5. Participation with Children and Youth Who are Not Disabled. (1) Each LEA shall ensure, to the maximum extent appropriate, that children and youth with disabilities, including children and youth in public or private institutions or other care facilities, are educated with children and youth who are not disabled.

(2) Each ARC shall ensure that the placement alternative and location determined for each child or youth with a disability:

(a) Is chronologically age-appropriate; and

(b) Provides an opportunity for interaction with children and youth who are not disabled.

(3) If a residential facility or a nonpublic day school is located within the geographical boundaries of the LEA, then the LEA shall ensure that any child or youth with a disability in the school or facility is offered the opportunity to participate in the LEA's programs as needed to implement the IEP for that child or youth. This standard shall apply regardless of reasons for placement of the child or youth in the school or facility.

Section 6. Variety of Services. (1) Each LEA shall ensure that its children and youth with disabilities have available to them the variety of educational programs, curricula, and services available to resident children and youth without disabilities, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(2) Each LEA shall take steps to provide children and youth with disabilities equal opportunities for ongoing participation in the same programs and activities as are available to children and youth without disabilities.

(3)(a) Each ARC shall ensure any conditions for participation in a particular program or service neither discriminate nor have the effect of discriminating on the basis of disability.

(b) If an ARC identifies any condition for participation which discriminates against a child or youth with a disability, then the LEA shall arrange for the conditions to be modified so as not to discriminate against the child or youth.

(c) If conditions for participation relate to a specific level of knowledge or skills, the LEA does not have to make modifications in these requirements provided the manner in which the level of knowledge or skill is measured does not discriminate on the basis of disability.

(d) If a child or youth with a disability meets conditions for participation and chooses to participate in a particular program, the LEA shall arrange for the program or service to be specially designed or modified as needed.

(4) Each LEA shall make available:

(a) Physical education services, specially designed if necessary, to every child and youth with a disability receiving a free appropriate public education, including children and youth in separate facilities;

(b) The opportunity to participate in the regular physical education program available to children and youth without disabilities;

(c) Specially designed physical education specified on the IEP; and

(d) Specially designed adaptive physical education if prescribed on the IEP.

Section 7. Nonacademic and Extracurricular Services and Activities. (1) Each ARC shall take steps to provide nonacademic and extracurricular services and activities which give children and youth with disabilities an equal opportunity for participation in those services and activities, including counseling, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies providing assistance, and employment of students.

(2) Each LEA shall arrange to provide nonacademic and extracurricular activities in the regular education environment to

children and youth with educational disabilities. This shall include children and youth with disabilities who are provided academic instruction away from the regular education environment.

Section 8. Release. (1) Concluding special education and related services.

(a) Each ARC shall release a child or youth when he concludes specially designed instruction and related services and resumes full-time regular education services. A child or youth shall conclude specially designed instruction and related services when an ARC determines the child or youth no longer needs specially designed instruction and related services.

(b) When the ARC determines a child or youth no longer needs specially designed instruction and related services and can be served full time by regular education services, the ARC shall:

1. Prepare a meeting summary documenting the ARC decisions including a description of any services needed to facilitate the maintenance of the child or youth in the regular education program. This refers to those modifications and supplementary aids and services which are available to children or youth who are not disabled and who are enrolled in a similar program;

2. Notify the parent of the child or youth of the change in services; and

3. Provide a copy of the summary to regular instructional personnel who will be serving the child or youth in the regular education program.

(c) Each LEA shall arrange for each child or youth that an ARC releases to return to the location the child or youth would have been if not previously determined disabled and in need of specially designed instruction and related services.

(2) Each LEA shall ensure that each child or youth who is no longer under the jurisdiction of the LEA is released, including a child or youth who graduates, ages out, transfers to another LEA, or withdraws from the education system.

(a) Withdrawal and transfer procedures for a child or youth with an educational disability shall be the same as those for a child or youth without a disability.

(b) If a youth with an educational disability who is age sixteen (16) to twenty-one (21) years old withdraws prior to program completion, the LEA shall provide a written notice that the youth is entitled to a free appropriate public education.

Section 9. Change in Services. (1) An ARC shall make change of services decisions consistent with this administrative regulation. Change in services shall include:

(a) Initiation of specially designed instruction and related services;

(b) Concluding specially designed instruction and related services and resuming full-time regular education services consistent with Section 8 of this administrative regulation;

(c) Graduation;

(d) Suspension; and

(e) Expulsion.

(2) Each ARC shall determine the need for continued specially designed instruction and related services each year after reviewing the IEP.

(a) If the services specified on the IEP have provided the child or youth with the competencies needed so educational performance is no longer adversely affected by the disability, the ARC shall arrange to release the child or youth consistent with Section 8 of this administrative regulation.

(b) If the educational performance of the child or youth continues to be adversely affected by the disability, the ARC shall revise the IEP, as needed, to reflect current needs and any transition needs.

(c) The ARC shall make a placement decision based on the revised IEP and the requirements of this administrative regulation.

Section 10. Transition. (1) Each LEA shall implement a systematic process for transition between in-school programs, out-of-school programs and postsecondary environments.

(2) As part of the annual review, each ARC shall consider the needs of each child or youth with a disability who is in the process of transition.

(a) The ARC shall address instructional transition in the IEP.

(b) For a youth entering a secondary program, the IEP shall be consistent with that youth's multiyear course of study.

(3) Each LEA shall participate in meetings initiated by early intervention service providers to plan for a child's smooth transition from the early intervention program to preschool special education services available through the LEA.

(a) If the parent of a preschool-age child chooses to continue services for the child, a plan for the child's programmatic transition to the LEA's services shall be implemented.

(b) No later than the child's third birthday, an ARC shall determine eligibility of the child for preschool special education services and, as needed, shall develop an IEP, make a placement decision, and implement the IEP in the placement determined.

(4) Plan for transition. Each youth with a disability shall have a plan to assist the youth in preparing for postschool activities. An ARC shall develop this plan no later than the age when youth without disabilities enter high school consistent with the youth's multiyear course of study.

(a) The plan for transition shall be based on results of current evaluation which include assessments of vocational functioning as specified under the Carl D. Perkins Vocational and Technology Education Act.

(b) The plan for transition shall address:

1. Projected postschool activities and long-range outcomes including:

a. Adult status (emancipation, full guardianship, limited guardianship);

b. Work (jobs and job training, including competitive, supported, sheltered, volunteer employment, work activity, and military);

c. Postsecondary training and learning (continuing education, such as college, vocational technical school, literacy programs);

d. Home living (independent living with or without support, group-home living, living with parents or relatives, day habilitation, residential);

e. Community participation (accessing community resources, independently, with or without support, or through group participation. Community resources include banking, shopping, public transportation, medical or health services, governmental agencies and services, voting); and

f. Recreation and leisure (preferred free-time activities with or without support).

2. Anticipated needs of the youth related to preparation for postschool activities and achievement of projected long-range outcomes including implications and anticipated adult status of the youth at age eighteen (18); and

3. Steps to be taken to address needs including supplementary services and activities.

(c) Annually, the ARC shall review and revise, as needed, the plan for transition.

(d) When the ARC determines that a youth needs assistance from service agencies outside the LEA to make a transition to postschool activities, the ARC shall include potential service providers in transition planning and develop an individual interagency transition plan to include interagency responsibilities and timelines for referral to each agency. If a participating agency fails to provide agreed upon services, the ARC shall initiate a meeting, as soon as possible, to identify alternative strategies to meet transition needs.

(e) No later than when the youth reaches age sixteen (16) the LEA shall arrange for transition planning to be implemented.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, and their parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: Transition plans will be developed for each youth with a disability by the age of 16.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: State level monitoring of placement in the least restrictive environment is mandated by federal regulations under IDEA. Therefore, least restrictive environment requirements must be maintained in the KARs. No other alternative was available.

(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: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: Paperwork and reporting requirements will change as a result of this administrative regulation. These changes in the area of transition are a part of the federal regulations and have impact on KERA regulations for drop-out prevention.

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1412 (5)(B), 34 CFR 300.550-553.

2. State compliance standards. This administrative regulation requires each local education agency to have board approved policies and procedures in place to provide for placements in the least restrictive environment for children and youth with disabilities.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for placement of students in the least restrictive environment.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Federal regulations mandate that each state shall ensure that each public agency establishes and implements procedures that meet federal requirements regarding placement in the least restrictive environment. These regulations further define the federal mandates so to establish the parameters for monitoring. It is for this reason that some regulations appear to impose stricter or additional requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Federal regulations mandate that each state shall ensure that each public agency establishes and implements procedures that meet federal requirements regarding placement in the least restrictive environment. These regulations further define the federal mandates so to establish the parameters for monitoring. It is for this reason that some regulations appear to impose stricter or additional requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:230. Delivery of services.

RELATES TO: KRS 157.200, 157.360, 158.6451, 160.290, 167.150, 167.170, 34 CFR Part 300, Appendix C, 20 USC 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 167.015

NECESSITY AND FUNCTION: KRS 156.160, 157.220, and 167.015 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local education agencies and state operated schools shall meet in student, program, services, and operational performance and related to special education programs; KRS 157.200, 167.150, and 167.170 establish the statutory framework for special education programs. This administrative regulation establishes requirements related to delivery of services to children and youth with disabilities and is necessary to assure uniformity in providing specially designed instruction and related services and to conform with 20 USC 1401 through 1420.

Section 1. Definitions. (1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, specified in the individual education program (IEP) and is used to increase, maintain, or improve the functional capabilities of a child or youth with a

disability.

(2) "Assistive technology service" means any service that directly assists a child or youth with a disability in the selection, acquisition, or use of an assistive technology device.

(3) "Caseload" means the number of children or youth assigned to a teacher of exceptional children for the purpose of providing individualized specially designed instruction and related services.

(4) "Collaboration model" means that a teacher of exceptional children either works with children and youth with disabilities in the regular classroom to provide specially designed instruction and related services or collaborates with the regular class teacher who provides the specially designed instruction and related services, or both.

(5) "Implementation" means that services are planned, initiated and provided as described in the IEP.

(6) "Implementer" means the title of a person specified by an ARC to implement a short-term instructional objective in the IEP of a child or youth with a disability.

(7) "Instructional plans" means instructional sequences, criteria for mastery, strategies and techniques, materials, equipment and other resources designed for implementation of the goals and objectives specified in the IEP.

(8) "Itinerant teacher" means a teacher of exceptional children who travels from school to school, class to class, the home, or hospital setting on a regularly scheduled basis to provide specially designed instruction for children and youth with disabilities either individually or in small groups. An itinerant teacher may be used for either the resource class or the collaboration model.

(9) "Longitudinal data" means:

(a) Performance data across multiple settings in the areas of academics, communication, cognition, social competence, recreation and leisure, domestic and community living, and vocational skills;

(b) Behavior observations in multiple settings; and

(c) Continuous assessment of progress on IEP goals and objectives.

(10) "Resource class" means a special education class established to serve children and youth with disabilities who need specialized supplementary instruction on a part-time basis provided individually or in small groups which cannot be provided in a regular education class.

(11) "Special class" means a special education class established to serve only children and youth with disabilities who need a comprehensive, self-contained, specially designed instructional program in a highly structured environment for the majority of or the entire school day.

(12) "Special education class" means a setting where personnel provide specially designed instruction and related services and where all of the children or youth have disabilities. A special education class shall be provided only if needed to implement the placement decision of an ARC for a child or youth with a disability.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for the delivery of services to children and youth with disabilities. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Individual Education Program (IEP) Implementation. (1) The admissions and release committee (ARC) shall ensure an IEP is in effect before special education and related services are provided to a child or youth with a disability. A current IEP for a child or youth with disabilities who needs specially designed instruction and related services shall be in effect at the beginning of each school year.

(2) Each LEA shall implement each IEP, as written, as soon as possible following the ARC meeting consistent with the beginning and ending dates for each service specified in the IEP.

(3) Each implementer, specified in the IEP, shall design and initiate instructional plans for accomplishing IEP goals and objectives.

(4) Each IEP implementer shall:

(a) Monitor student progress;

(b) Maintain records of each child or youth's progress;

(c) Use measurement techniques that are specified in the IEP for the objectives being measured; and

(d) Report progress toward and achievement of IEP short-term objectives on an ongoing basis but not less than annually.

(5) Each ARC shall use the progress records maintained by each implementer to:

(a) Evaluate the performance of the child or youth in achievement of IEP goals and objectives which relate to attainment of the applicable learning goals and valued outcomes required in KRS 158.645 and 158.6451;

(b) Determine the effectiveness of and modify instructional services;

(c) Provide student and parent feedback;

(d) Determine if the child or youth continues to need specially designed instruction and related services;

(e) Revise the IEP, as needed; and

(f) Document implementation of the IEP.

(6) Each school shall ensure that related services described on the IEP of a child or youth with a disability are provided by qualified personnel.

(7) If the ARC determines that a particular assistive technology item is required by a child or youth with a disability to implement the IEP, the technology shall be provided including:

(a) Evaluating the needs of a child or youth with a disability, including functional evaluations in the customary environments;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

(c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child or youth with a disability, or if appropriate, the family of the child or youth;

(f) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities; and

(g) Making the technology item available for home use or use in other environments if required for the provision of a free appropriate public education for the child or youth.

Section 4. Program Services and Resources. (1) The LEA shall make specially designed instruction and related services available to implement the IEP of each child or youth with a disability. A variety of program options may be used to deliver the services in accordance with an IEP, such as collaboration, consultation, resource program, special class, or vocational liaison.

(2) To implement the IEP of each child or youth with a disability, each LEA shall assign qualified personnel to provide services in the placement determined by the ARC.

(3) Unless the ARC provides appropriate written justification, each child or youth with a disability shall be enrolled in a regular education class based on chronological age appropriateness and shall be considered a member of that class for the purpose of regular education class size.

(4) If an itinerant teacher provides specially designed instruction and related services, then the LEA shall arrange for permanent work space and defray travel expenses.

(5) If an ARC decides the placement for a child or youth with a disability requires either a part-time or full-time special education class, the school shall arrange for the special education class needed

to implement the IEP for the child or youth.

(a) The chronological age range for children and youth with disabilities receiving services in a special education class shall not exceed the age range of children and youth without disabilities enrolled in the school or facility where the class is located. Variations of this provision shall be considered for approval upon submission of written request and justification to the Division of Exceptional Children Services.

(b) A special education classroom shall be comparable in size, condition and location to regular education classrooms consistent with Kentucky Department of Education building and grounds specifications for instructing children and youth.

(6) Each LEA shall ensure that children or youth who wear hearing aids have professional follow-up and services so hearing aids function properly.

(7) Each LEA shall make available all instructional materials, supplies, textbooks, technology and equipment needed to implement the IEP of each child or youth with a disability. This includes instructional materials, supplies and equipment which:

(a) Facilitate attainment of student outcomes and IEP goals and objectives; and

(b) Are appropriate for the chronological age of the child or youth.

Section 5. Caseload and Class Size. (1) Each LEA shall establish criteria in policies and procedures for caseloads for teachers of exceptional children. Caseloads for each teacher of exceptional children shall facilitate children and youth with disabilities attaining goals and valued outcomes required in KRS 158.6451 through the mastery of IEP goals and objectives.

(2) Each LEA shall operate special education classes according to membership and age range requirements for each disability and class plan as follows:

DISABILITY AND CLASS PLAN	MAXIMUM MEMBERSHIP AND TOTAL AGE RANGE		NUMBER AND AGE RANGE PER PERIOD	
Visual Disability				
Special Class	10	6 Years	NA	NA
Resource Class	10	6 Years	7	4 Years
Itinerant Teacher	12	NA	7	4 Years
Hearing Impaired				
Special Class	6	4 Years	NA	NA
Resource Class	8	6 Years	4	4 Years
Itinerant Teacher	10	NA	4	4 Years
Physical Disability and Other Health Impaired				
Special Class	16	6 Years	NA	NA
Resource Class	20	6 Years	8	6 Years
Speech-Language				
Caseload	75	NA	NA	NA
Emotional-Behavioral Disability				
Special Class	8	4 Years	NA	NA
Resource Class	15	6 Years	8	4 Years
Mental Disability				
Mild Level				
Special Class				
Elem. K-8	15	4 Years	NA	NA
Sec. 7-12	15	4 Years	NA	NA
Resource Class				
Elem. K-8	15	6 Years	8	4 Years
Sec. 7-12	20	6 Years	8	4 Years
Functional Level				
Special Class	10	6 Years	NA	NA
Resource Class	10	6 Years	8	6 Years
Learning Disability				
Special Class				
Elem. K-8	10	4 Years	NA	NA
Sec. 7-12	15	4 Years	NA	NA
Resource Class				
Elem. K-8	15	6 Years	8	4 Years
Sec. 7-12	20	6 Years	8	4 Years
Multiple Disability				
Special Class	10	6 Years	NA	NA
Resource Class	10	6 Years	7	6 Years

(8) Children and youth with the disability of autism or traumatic brain injury who are determined to be eligible for specially designed instruction and related services shall be served in special classes, resource classes, or regular classes as specified by an ARC.

(9) If a teacher of exceptional children provides services through the collaboration model, the maximum caseload shall not exceed twenty (20) children and youth with disabilities for grades 9-12, and fifteen (15) children and youth with disabilities grades primary-8.

(10) If a teacher of exceptional children is employed less than full time to provide specially designed instruction and related services or provides instructional services for children and youth without disabilities, the LEA shall reduce the teacher's special education class or caseload proportionately.

(11) If a caseload or class size exceeds the maximum specified in this administrative regulation for fifteen (15) school days, the principal, or the school council, if the school has implemented school-based decisionmaking, shall ask the superintendent to request an exemption or waiver from the State Board for Elementary and Secondary Education pursuant to KRS 157.360 and 156.160.

Section 6. Curriculum. (1) A comprehensive framework or course of study for children and youth with disabilities shall be based on each school's curricula required for goals and valued outcomes in KRS 158.6451.

(2) Each school shall include the unique needs of children and youth with disabilities in the design and implementation of the basic curricula.

(3) Each school shall extend and modify curricula to facilitate attainment of the learning goals and valued outcomes required in KRS 158.6451, and IEP goals and objectives for children and youth with disabilities.

Section 7. Services for Transfer Students. (1) Each LEA shall make specially designed instruction and related services available for children and youth with disabilities who transfer into the LEA and who were receiving specially designed instruction the time of the transfer.

(a) Each LEA shall provide specially designed instruction and related services if:

1. The child or youth transfers from another LEA in the Commonwealth; and

2. The LEA has documentation on record that the child or youth has a disability; has been determined to be eligible for specially designed instruction and related services; the LEA from which the child or youth transferred provided specially designed instruction and related services up to the time the child or youth transferred, and all due process requirements have been met.

(b) The ARC of the school in which the child or youth is placed shall assume responsibility for him and shall proceed with the ARC process including annual review and revision of the IEP, determination of placement on an annual basis, and three (3) year reevaluation.

(2) Placement for temporary services.

(a) Each LEA shall make placement for temporary services available for a maximum of thirty (30) school days for children and youth with disabilities who transfer into the LEA and were receiving specially designed instruction at the time of the transfer if:

1. The child or youth transfers from another state, or the child or

youth transfers from another LEA in the Commonwealth and education records are not available;

2. The parent reports the child or youth has a disability and makes a written request for continuation of the specially designed instruction and related services previously provided; and

3. The LEA documents that the agency from which the child or youth transferred provided specially designed instruction and related services up to the time of the transfer. Documentation may include:

a. A copy of the current IEP and description of placement in the least restrictive environment; or

b. Written correspondence from, or written documentation of verbal communication with, the previous service provider describing the IEP goals, objectives, and services, and a description of placement in the least restrictive environment.

(b) The ARC of the school in which the child or youth is placed shall assume responsibility for him and shall proceed with the ARC process as soon as possible and no later than thirty (30) school days after the child or youth begins receiving specially designed instruction and related services on a temporary basis.

(3) The LEA shall arrange for the same services and placement alternative for the transferred child or youth as those provided by the previous service provider.

(4) When documentation of previous services is not available, the LEA shall enroll the child or youth in the LEA and place him in an age and level appropriate regular education program pursuant to the LEA's standard procedures for transfer students.

Section 8. Program Completion and Graduation. (1) Each LEA shall ensure each youth with a disability has an opportunity to complete high school in the same manner and following the course of study available to youth who are not disabled. Each high school shall grant diplomas to each youth with a disability who meets criteria and standards as established by the State Board for Elementary and Secondary Education and shall not prevent a youth with a disability from obtaining a high school diploma.

(a) Each high school shall issue the same high school diploma to each youth with a disability who meets the required graduation criteria and standards as that issued to youth without disabilities who meet the same criteria.

(b) A youth with a disability who is prevented by that disability from meeting the same criteria for graduation as youth without disabilities and who meets criteria for an alternate portfolio shall be issued a certificate of program completion upon completing a program designed by the ARC.

(c) Each high school shall grant a youth with a disability a diploma or certificate of program completion as part of the graduating class, and no distinction shall be made in the ceremonies.

(d) High schools shall arrange for each youth with a disability to participate in graduation ceremonies with peers who are not disabled.

(e) High schools shall not conduct graduation ceremonies in a manner which draws undue attention to any youth which would identify the youth as disabled.

(2) No later than the age when youth without disabilities enter high school, the ARC shall plan a multiyear course of study leading to completion of high school for each youth with a disability.

(a) A multiyear course of study shall describe those programs and services in which the youth with a disability will participate in order to complete high school and achieve the student capacities identified in KRS 158.645 and the goals identified in KRS 158.6451. The multiyear course of study shall describe the time frame the youth is anticipated to participate in a particular program or service.

(b) The ARC shall review the multiyear course of study during each annual review of the IEP and record any changes.

(c) The high school shall make arrangements for implementation of the multiyear course of study leading to completion of a secondary program.

(3) A youth with a disability shall be eligible for a certificate of program completion if an ARC determines that:

(a) Longitudinal data documents that the severity of the disability prevents the youth from:

1. Completing the usual course of study even with extended school services and other program modifications and adaptations; and

2. Acquiring, maintaining, generalizing skills, and demonstrating performance without intensive, frequent, and individualized community-based instruction. The youth requires extensive direct instruction in multiple settings for application and transfer of functional skills and is unable to apply or use academic skills at a minimal competency level in natural settings when instructed solely or primarily through school-based instruction.

(b) The inability of the youth to complete the usual course of study is not the result of excessive or extended absences, visual or auditory disabilities, specific learning disabilities, emotional-behavioral disabilities, or social, cultural, or economic differences.

Section 9. Length of School Day. (1) Each ARC shall ensure that the length of the instructional school day for each child or youth with a disability is the same as for children and youth without disabilities except as specified on an individual IEP.

(a) An ARC shall not shorten or lengthen the school day for a child or youth with a disability for the purpose of transportation, administrative convenience, or parental requests.

(b) An ARC may determine that a child or youth needs a change in the length of school day if the medical condition of the child or youth indicates that the instructional day needs to be altered based on written evidence which shall include:

1. A statement from a physician which describes the medical condition of the child or youth and its impact on the ability of the child or youth to participate in a full instructional school day;

2. The anticipated duration of the need for an altered length of school day;

3. A description of the changes or modifications in curriculum, instruction, classroom arrangements and support services needed to maintain the child or youth in a full instructional school day; and

4. Any harmful effects on the child or youth if the length of the school day is not altered.

(c) If an ARC determines that the instructional school day is to be altered for a child or youth, then the ARC shall revise the IEP to reflect changes in the program and include in the written meeting summary:

1. The issues discussed, the data used to make decisions, options considered, both accepted and rejected and why; and

2. The decision related to the anticipated duration of the need for an altered length of school day and any special accommodations that are necessary for returning the child or youth to a full instructional day.

(2) The LEA shall submit each request for a shortened school day to the local board of education for approval prior to submission to the Kentucky Department of Education for approval. Board action shall be subject to confidentiality requirements.

Section 10. Extended School Year and Services. (1) Each LEA shall make available an extended school year (ESY) program and extended school services (ESS) for children and youth with disabilities.

(2) Each LEA shall provide an extended school year to a child or youth with disabilities, regardless of the severity, if the ARC determines the services are needed in order for the child or youth to receive a free appropriate public education. Extended school year program shall be provided when the recoupment time for the child or youth with a disability exceeds that of similar age peers who are not disabled and who experience the same lapse in instruction.

(3) Each ARC shall determine if a child or youth with a disability needs an extended school year regardless of the nature and severity of the disability. The ARC shall determine:

(a) The extent of performance loss resulting from a lapse in instruction; and

(b) The time required for the child or youth to recoup the loss to the level attained before the lapse.

(4) An ARC shall determine the need for extended school year using the following ongoing progress data points as measured by IEP implementers:

1. Measurement at the end of instruction;

2. After a lapse of instructional time, beginning instruction again; and

3. At regular intervals until the performance level is equal to the point at which the lapse in instruction time began; or

4. Tests and observation data collected over a period of time.

(5) Each LEA shall provide extended school services for a child or youth with disabilities when the child or youth meets the eligibility criteria for those services.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities and their parents.

(a) Direct and indirect costs or savings to those affected:

1. First year: An increase in cost to address a new federal requirement for assistive technology and services is possible; however, data is not available to estimate the number of children and youth who have not been provided appropriate devises and services. There will be no cost to parents. The reduction of the class size maximums in EMH from 20 to 15 may result in a financial impact due to the increased staff which may be necessary to address these ratios. Such an increase should only occur in the first year due to the recommendation outlined below at 3.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition: A task force with membership representing service providers, parents, and advocates involved in the education of children and youth with disabilities has been established to study and make recommendations to the department about appropriate caseload and class size. Upon consensus, the department will propose an amendment to this administrative regulation by the State Board for Elementary and Secondary Education. As KERA is implemented and services for all children are expanded, fewer children and youth with disabilities will need to be provided "unique" or "different" services in separate classes, thus reducing facility costs. As all teachers are trained to serve children and youth with diverse learning needs, fewer special supplementary teachers will be needed, thus reducing the cost of personnel.

(b) Reporting and paperwork requirements: Waivers or exemptions for class size and length of school day must be submitted for approval by the State Board for Elementary and Secondary Education.

(2) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect costs or savings: None

1. First year: Possible increase in requests on class size waivers for children and youth with a mild mental disability.

2. Continuing costs or savings: Requests for waivers should decrease after this administrative regulation is amended to address appropriate class size and caseload assignments.

3. Additional factors increasing or decreasing costs: Local education agencies will have complete local operating policies and procedures for compliance with this administrative regulation which will require less staff time in reviewing, monitoring, training, and providing technical assistance to ensure compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and reporting compliance.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Pupil-staff ratios for special education based on a percentage of the maximum class size allowed for regular education in KRS 157.360 were proposed during the drafting process. Many supported the concept; however, service providers and parents did not agree with school administrators on an appropriate percentage. The class sizes, age ranges and maximum numbers according to a disability category in current regulation have been included in the revised administrative regulation except for the category of mental disability. Service options were added for category of moderate to severe (functional) mental disabilities to bring Kentucky into compliance with federal requirements for a continuum of service alternatives and services in the least restrictive environment. The maximum total enrollment, maximum class size per period, and age ranges for children and youth with mild mental disabilities have been made consistent with requirements for children and youth with specific learning disabilities.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1401(a)(20),(25),(26); 1412(6); 1413; 1414(a)(6); 34 CFR Part 300

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that policies and procedures established and administered by the local education agency are consistent with the requirements in the Individuals with Disabilities Education Act.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for providing a free appropriate public education to children and youth with disabilities. The federal mandate requires specific educational and related services to be provided to a child or youth with a disability that:

- has been provided at public expense, under public supervision and direction, and without charge;
- meets state standards;
- includes an appropriate preschool, elementary, or secondary school education in the state involved; and
- is provided in conformance of an individualized education program developed by a group of persons knowledgeable about the child, the disability, and service options.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses requirements in the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:240. Confidentiality of personally identifiable information.

RELATES TO: KRS 157.200, 157.360, 160.290, 167.150, 20 USC 1232e, 1232g, 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 157.260, 167.015

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes confidentiality requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

Section 1. Definitions. (1) "Access rights" means the rights of the parent, eligible student, and an authorized representative to review and inspect any information collected, used, or maintained by each agency.

(2) "Agency" means any local education agency or other public body established by state or local authority and involved in the identification, evaluation, and education of children and youth with disabilities. The term applies to private schools and facilities approved by the State Board for Elementary and Secondary Education for the purpose of placement or referral by a local education agency of a child or youth with a disability.

(3) "Confidentiality" means the protection of all personally identifiable data, information, and records collected, used, or maintained by an agency in the identification, evaluation, educational placement of a child or youth, or the provision of free appropriate public education for a child or youth with a disability.

(4) "Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(5) "Disclosure" means permitting access to, the release, transfer, and other communication of educational records and any personally identifiable information contained in the records of a child or youth. This includes disclosure made orally, in writing, or by any other means, including electronic transfer of information through a telecommunications system.

(6) "Educational records" means documents and other written information directly related to a child or youth which are collected, maintained or used by agency personnel. Educational records shall include such records as:

(a) Personal and family data;

(b) Evaluation and test data including aptitude, achievement, interest, intelligence, personality, behavior observation, and other diagnostic information;

(c) Medical, psychological, and anecdotal reports used for educational purposes;

(d) Progress reports;

(e) Written accounts of conferences with children or youth or their parents;

(f) An individual education program (IEP) for a child or youth with a disability;

(g) Copies of correspondence about the child or youth;

(h) Records maintained by other public or private agencies and individuals who have performed services for the agency for educational purposes;

(i) Any information that the agency uses for educational purposes, whether or not initiated or generated by the agency, such as, reports of a psychiatric or psychological evaluation from a community mental health agency; and

(j) Other information or data used in working with the child or youth or required by federal and state administrative regulations.

(7) "Eligible student" means a youth who has reached his 18th birthday or who is attending an institution of postsecondary education. A student shall not be "eligible" if the agency has been notified of a court order establishing full guardianship or limited guardianship for educational services under KRS 210.290.

(8) "Legitimate educational interest" means having custody of records; collecting and using information for identification, evaluation, educational placement of a child or youth, and the provision of a free appropriate public education to a child or youth with disabilities; administering, auditing, enforcing, or monitoring compliance with the federal or state program requirements.

(9) "Personally identifiable" means data or information that include any of the following:

(a) Name of a child or youth;

(b) Name of the parent of a child or youth or other family member;

(c) Address of a child or youth or family members;

(d) A personal identifier, such as Social Security number or an alphanumeric identification code, such as a student number;

(e) A list of personal characteristics or traits which would make identity of a child or youth easily traceable or discernible; or

(f) Other information which would make identity of a child or youth easily traceable.

(10) "Protection" means denial of disclosure, access to, release, transfer, and other communication of educational records and the personally identifiable information contained in those records by any means, including oral, written, or electronic means, to any party for unauthorized or improper use.

(11) A "record" means information recorded in any form including

handwriting, print, tapes, braille, diskettes, film, microfilm, microfiche, photographs, or drawings.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have board approved policies and procedures in operation for protection of confidentiality of personally identifiable information that is collected, used, or maintained in the identification, evaluation, and educational placement of children and youth, or in the provision of specially designed instruction and related services for children and youth with disabilities. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Notice. (1) At least once each year, and before any major identification, location, or evaluation activity, each agency shall give notice about confidentiality protections to parents. This notice may be provided in conjunction with the notice the agency gives to meet the requirements of the Family Educational Rights and Privacy Act (FERPA). The notice shall be published or announced in newspapers or other media or both, with circulation adequate to notify parents throughout the jurisdiction of the agency and include a description of the:

(a) Children and youth with disabilities on whom personally identifiable information is maintained;

(b) Types of information sought;

(c) Methods the agency intends to use to gather the information; including the sources from whom the information may be gathered;

(d) Uses made of the information;

(e) Rights of parents, children, and youth regarding this information, including the rights under FERPA;

(f) Policies and procedures which the agency must follow for storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(g) Extent that the notice is given in the native languages of the various populations within the jurisdiction of the agency.

(2) Whenever the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or youth, or the provision of a free appropriate public education for a child or youth with disabilities, the agency shall include individual notice about confidentiality requirements to parents in the native language or other mode of communication used by the parent.

Section 4. Access Rights. (1) Each agency shall permit parents to review and inspect any educational record related to the identification, evaluation, and placement of their child or youth, or the provision of a free appropriate public education to the child or youth which are collected, maintained, or used by the agency.

(2) Treatment records related to a child or youth created and maintained by a physician or mental health professional or paraprofessional and used only in connection with the provision of medical or mental health care shall not be considered educational records.

(3) If test protocols and raw data generated by an evaluator in conducting an evaluation are accessible or revealed to others, the test protocols and raw data shall become educational records and shall be accessible to parents.

(4) Notes or documents in the sole possession of the maker shall be exempt from access by the parent or eligible student only if the note or document:

(a) Is a private note created solely by the individual possessing it;

(b) Is a personal memory aid; and

(c) The contents are accessible to, or revealed to, no one except the possessor's temporary substitute.

(5) If another person, such as a teacher, is shown or has access to the contents of the notes, then the contents are subject to review by parents or the eligible student. Oral communication from personal notes or documents shall result in the documents accessible to parents for review and inspection.

(6) Each agency shall comply with a parental request to inspect and review records:

(a) Without unnecessary delay;

(b) Before any meeting of the admissions and release committee or any hearing; and

(c) In no case more than forty-five (45) working days after the request is made.

(7) If a parent or eligible student requests, the agency shall provide an explanation and interpretation of the records for the parent, eligible student, or representative.

(8) Copies of the records shall be provided if failure to do so would prevent the parent from exercising the right to review and inspect the records.

(a) Each agency shall make printed (hard) copies of records stored on computers, microfiche, or other such media, if requested, for inspection.

(b) A fee may be charged for copies. A fee may not be charged if it would prevent access rights. A fee may not be charged for record search or retrieval.

(9) Each agency shall provide educational records consistent with the mode of communication used by the parent of the child or youth, such as a recorded or oral reading. If the parent's primary language is not English, the agency shall provide translation of educational records upon request.

(10) Each agency's procedures may specify the circumstances in which the agency would deny copies; however, the agency cannot have a policy or procedures that would effectively deny or prevent the parent or eligible student from reviewing or inspecting records.

(11) Each agency grants a representative of the parent the right to inspect and review the records. Each agency shall accept a parent's written authorization for a representative to inspect and review the records, whether or not the parent is present, if the authorization:

(a) Is a signed and dated written document;

(b) Contains the purpose of the disclosure; and

(c) Contains the name and title of the authorized representative

(12) An agency may presume that the parent has the authority to inspect and review records relating to his child unless the agency has been notified that the parent does not have the authority under applicable state law or judicial order governing such matters as separation and divorce.

Section 5. Record of Access. Each agency shall keep a record of all individuals who obtain access to the educational records collected, maintained, or used including the name of the person, the date the person was given access and the purpose for which the person was authorized to see the records. The agency shall not have to keep a record of access when the parent or employees of the agency with a legitimate educational interest use the records.

Section 6. Records on More Than One (1) Child or Youth. If any education record contains information about more than one (1) child or youth, the parent shall have the right to inspect and review only the information relating to the child or youth or to be informed of that specific information.

Section 7. List of Types and Location of Information. If requested by the parent, each agency shall provide the parent a list of the types and location of educational records collected, maintained, and used by the agency. The list shall specify the address where the record is located and the title and phone number of the custodian of the records.

Section 8. Amendment of Records at Parents' Request. A parent who believes that information in educational records is inaccurate, misleading, or violates the privacy or other rights of the child or youth may request the agency to amend the information.

(1) The agency shall decide whether to amend the information in accordance with the parent's request within fourteen (14) calendar days of time of receipt of the request and shall notify the parent whether the information has been amended consistent with the request.

(2) If the agency decides to refuse to amend the information in accordance with the request, it shall provide a written explanation to the parent and advise the parent of the right to a records amendment hearing. A full and complete description of the record amendment hearing procedures used by the agency shall be included with the written explanation.

Section 9. Opportunity for a Hearing. If requested, each agency shall provide an opportunity for a hearing to challenge information in education records to make sure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or youth.

Section 10. Record Amendment Hearing Procedures. A record amendment hearing shall be conducted according to the following procedures:

(1) The hearing shall be held within fourteen (14) working days of the date the agency receives the request.

(2) The agency shall notify the parent of the date, time, and place at least seven (7) working days in advance of the hearing.

(3) The hearing shall be conducted by any individual, including an official of the agency, who does not have a direct interest in the outcome of the hearing.

(4) A parent shall be given a full and fair opportunity to present relevant evidence including:

(a) Presenting witnesses, questioning school employees, and providing oral testimony or written evidence as to the inaccurate or misleading information in the educational record; and

(b) Being represented by one (1) or more persons at his own expense including an attorney.

(5) The decision shall be issued in writing within fourteen (14) calendar days of the date of the hearing.

(6) The decision shall be based solely on the evidence presented at the hearing and the applicable law and shall include a summary of the evidence and the reasons for the decision.

Section 11. Result of Hearing. (1) If, as a result of the hearing, the agency decides the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child or youth, the agency shall amend the information accordingly and so inform the parent in writing.

(2) If, as a result of the hearing, the agency decides the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child or youth, it shall inform the parent of the right to place in the records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the child or youth under this section shall:

(a) Be maintained by the agency as part of the records of the child or youth as long as the record or contested portion is maintained by the agency; and

(b) Be disclosed as part of the records as long as the record or contested portion is maintained by the agency.

Section 12. Consent. (1) Parental consent, which specifies the records to be released and to whom, shall be obtained before personally identifiable information is:

(a) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to subsection (2) of this section; or

(b) Used for any purpose other than meeting a requirement under this part.

(2) An agency may not release information from education records to other agencies without parental consent unless the agency's public notice explains the agency's disclosure policy.

(3) If a parent refuses to provide consent to release records which are needed to provide a free appropriate public education for a child or youth and the LEA disagrees with the refusal, a due process hearing shall be requested.

Section 13. Safeguards. (1) Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) One (1) official at each agency shall be assigned responsibility for protecting the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding the agency's policies and procedures for confidentiality.

(4) Each agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Section 14. Destruction of Information. (1) Each agency shall inform the parent when personally identifiable information which has been collected, maintained, or used in the identification, evaluation, educational placement, or provision of a free appropriate public education is no longer needed to provide educational services to the child or youth. In informing a parent about his rights under this section, the agency shall remind him that the records may be needed by the youth or the parent for Social Security benefits or other purposes.

(2) If requested by the parent, the agency shall destroy the information that is no longer needed. However, a permanent record of a student's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. The agency shall not destroy education records if:

(a) There is an outstanding request to review and inspect them exists;

(b) They are maintained for documentation of compliance with program requirements of the Individuals with Disabilities Education Act (IDEA) or the Education Department general administrative regulations.

(3) Personally identifiable information on a child or youth with disabilities may be retained permanently unless the parent requests that it be destroyed.

Section 15. Rights of the Child or Youth. (1) Each agency shall notify the parent at least one (1) year before a youth's 18th birthday that the rights regarding review, inspection, and disclosure of records will transfer to the youth at the age of eighteen (18) unless the agency is provided with evidence that a court order or legal document proves the parent is the guardian or youth's representative in educational matters.

(2) An agency shall not disclose educational records of a youth over the age of eighteen (18) to the parent without:

(a) The youth's written consent;

(b) A court order; or

(c) Proof that the youth is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, or suspected of having disabilities, and their parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: Paperwork and reporting requirements are not changed by this administrative regulation. Documentation is maintained for compliance with the federal requirements established in 1977 including notice, parental consent for release of information, and disclosure of information.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Local school districts should have complete local policies and procedures for compliance with the administrative regulation and thus require less staff time in reviewing, monitoring, training, and providing technical assistance for compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and follow-up to corrective action plans.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments:

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1412 (2)(D), 1414 (a)(1)(B), 1417 (c); 34 CFR Part 300.

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that policies and procedures are established to protect the rights and privacy of parents and students in the collection, use, and maintenance of personally identifiable information under this program.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for protection of the rights and privacy of parents and students.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:250. Services in other programs.

RELATES TO: KRS 157.200, 157.360, 158.030, 158.100, 167.150, 20 USC 1232g, 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 157.260, 167.015

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

Section 1. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation to provide for the placement of children and youth with disabilities in programs outside the LEA, such as public, private, or state operated programs. Policies and procedures shall address each requirement in this administrative regulation.

Section 2. Admissions and Release Committee (ARC) Process. Each LEA shall ensure that appropriate procedures are followed prior to placing a child or youth with disabilities in a private, other LEA, other public or state-operated program.

(1) If the LEA determines that appropriate specially designed instruction and related services cannot be provided through existing programs in the LEA, an ARC, including a representative of the other program, shall meet to address referral of a child or youth to the public, private, or state operated program. The LEA shall:

(a) Contact the program which provides the type of services specified on the child or youth's individual education program (IEP) regarding the possible referral of the child or youth to the program;

(b) Ensure that a representative of the program shall participate in the meeting regarding the possible referral. Participation shall be provided through attendance at meetings, written communications, or individual or conference calls. The receiving program shall be operated by an approved agency or organization which has indicated a willingness to provide the services requested by the LEA; and

(c) In collaboration with the representative of the program, review the child or youth's IEP to determine if the program is appropriate to provide the specified services. If the program is appropriate, it shall assume responsibility for implementing the provisions of the specially designed instruction and related services on the IEP.

(2) If another program accepts a child or youth from an LEA, it shall assume responsibility for:

(a) Providing specially designed instruction and related services as specified on the IEP;

(b) Ensuring that the child or youth and parent are afforded all rights and protections;

(c) Notifying the LEA of the need to initiate and conduct ARC meetings;

(d) Monitoring and evaluating the IEP at intervals specified on the IEP;

(e) Forwarding written results of monitoring and evaluation of the IEP to the parent and the LEA; and

(f) Participating in ARC meetings convened by the LEA.

(3) The LEA placing a child or youth in another program shall be responsible for:

(a) Ensuring the ARC membership includes a representative of the other agency;

(b) Convening ARC meetings requested by the other program regarding review and revision of the IEP;

(c) Ensuring participation by the other program, including individual or conference telephone calls, if the representative cannot attend;

(d) Conducting meetings for reviewing and revising the IEP at least on an annual basis or when requested by the parent;

(e) Conducting evaluations at least every three (3) years or as requested by the parent or other agency;

(f) Determining placement on an annual basis; and

(g) Ensuring that the child or youth and parent are afforded all rights and protections.

Section 3. Placement of Students in Private Schools by LEA. (1) If a child or youth with a disability is to be placed in a private educational program, the LEA shall place the child or youth with a disability only in an approved private educational program, consistent with Kentucky administrative regulations.

(2) The special educational program shall be:

(a) In conformance with the IEP;

(b) At no cost to the parents; and

(c) Meet standards that apply to state and local education agencies.

(3) Prior to referral and placement of a child or youth with disabilities in a private school or facility, the LEA shall make sure the facility is on a current Department of Education list of approved, nonpublic, special education programs. If the school or facility is out of state, the LEA shall make sure that the school or facility holds approval status from the state in which it is located.

Section 4. ARC Process for Preschool Programs. Each LEA shall follow appropriate procedures as outlined in 707 KAR 1:150 related to children in preschool programs.

Section 5. Responsibility for IEP Implementation. Although another program implements a child or youth's IEP, responsibility for compliance with state and federal requirements shall remain with the LEA.

Section 6. Placement of Students in Private Schools by Parents. (1) The LEA shall provide specially designed instruction and related services designed to meet the needs of eligible private school children and youth with disabilities residing in the jurisdiction of the LEA.

(2) If a child or youth with a disability is enrolled in private school and receives specially designed instruction or related services from the LEA, the LEA shall:

(a) Initiate and conduct meetings to develop, review, and revise an IEP for the child or youth; and

(b) Ensure that a representative of the other program attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private program, including individual or conference telephone calls.

(3) The LEA shall not be required to pay for the education of a child or youth with a disability at a private school or facility if the child or youth has a free appropriate public education available in the public school of residence and the parents choose to place the child or youth in the private school or facility.

(4) Specially designed instruction and related services shall be made available to the child or youth under IDEA, Part B, funded projects consistent with requirements under Education Department general administrative regulations (EDGAR) for participation of students enrolled in private schools.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and youth with disabilities, or suspected of having disabilities, and their parents, and private schools and facilities.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: Paperwork and

reporting requirements are not changed by this administrative regulation. Documentation is maintained for compliance with the federal requirements established in 1977 that a child or youth with a disability who is placed in or referred to a private school or facility by a public agency is provided specially designed instruction and related services in conformance with an Individual Education Program, at no cost to the parents, in a school or facility that meets state standards that apply to local education agencies consistent with the requirements under Part B of the Individuals with Disabilities Education Act.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Local school districts should have complete and accurate local policies and procedures for compliance with the administrative regulation which will require less staff time in reviewing, monitoring, training, and providing technical assistance for compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and follow-up to corrective action plans.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the State. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1412(1), 1413(a)(4), 1414(a)(6); 34 CFR Part 300.

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that a child or youth with a disability who is placed in or referred to a private school or facility by a public agency is provided specially designed instruction and related services in conformance with an Individual Education Program, at no cost to the parents, in a school or facility that meets state standards that apply to local education agencies consistent with the requirements under Part B of the Individuals with Disabilities Education Act.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for implementation of the requirements of least restrictive environment including providing a continuum of alternative placements to meet the needs of children and youth with disabilities.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents or local education agencies than the federal requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services

707 KAR 1:260. Comprehensive system of personnel development.

RELATES TO: KRS 157.200, 157.250, 160.290, 20 USC 1232e, 1413-1414

STATUTORY AUTHORITY: KRS 156.070, 157.220, 157.360

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in qualified personnel providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended.

Section 1. Definitions. (1) "Continuing education" means increasing the knowledge base and teaching expertise through preservice and professional development activities for qualified personnel employed to provide services for children and youth with disabilities.

(2) "Leadership personnel" means any person employed by the local education agency (LEA) in an administrative or supervisory position with the authority or responsibility for providing or supervising services for children and youth with disabilities.

(3) "Qualified personnel" means that an individual has met Kentucky Department of Education (KDE) approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he is providing specially designed instruction or related services.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for implementation and use of the Comprehensive System of Personnel Development established by KDE. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Data Collection. Annually each LEA shall determine if there is an adequate supply of qualified personnel exists, including leadership personnel, in each profession or discipline by collecting the number and type of personnel employed and needed to provide specially designed instruction and related services.

(1) The number and type employed shall include personnel who meet full certification or licensure requirements, and personnel who are employed on emergency, probationary, one (1) year provisional, or restricted certification.

(2) The LEA shall annually collect, interpret and report data consistent with the requirements of the annual data report to determine:

(a) The number and type of personnel employed to provide specially designed instruction;

(b) The number and type of personnel employed to provide related services;

(c) The number and type of new personnel needed to provide specially designed instruction;

(d) The number and type of new personnel needed to provide related services;

(e) The number and type of personnel requiring continuing

education for providing specially designed instruction and related services; and

(f) The content areas in which continuing education is needed for providing specially designed instruction and related services.

(3) The LEA shall project the number and type of personnel, including leadership personnel, needed:

(a) Currently;

(b) Based on a five (5) year projection determined by individuals to be served; and

(c) Based on attrition of personnel.

(4) The LEA shall use a variety of data sources for determining needs including vacancies, retirees, student teacher ratio, monitoring reports, and corrective action plans.

Section 4. Recruitment and Retention. Each LEA shall take steps to recruit and retain new or additional personnel, including minorities and personnel with disabilities, by actively seeking to employ and retain qualified personnel to provide services for children and youth with disabilities.

Section 5. Personnel Preparation and Continuing Education. Each LEA shall make sure that all personnel needed to implement Part B of the IDEA are appropriately and adequately prepared including:

(1) Continuing the education opportunities for regular, special education, and related services personnel involved in the identification, evaluation, and education of children and youth with disabilities;

(2) Notifying the special education and related services personnel of training and conference dates and other pertinent information related to continuing education opportunities.

Section 6. Dissemination of Significant Information. (1) Each LEA shall have local board approval for effective procedures for:

(a) Acquiring and disseminating to teachers and administrators involved in the education of children and youth with disabilities significant information derived from educational research, demonstrations, and similar projects; and

(b) Adopting, where appropriate, promising educational practices, materials, and technology developed through such projects.

(2) The LEA shall acquire information about:

(a) Research findings;

(b) Demonstration projects; and

(c) Products and programs proven successful in educating children and youth with disabilities.

(3) The LEA shall review information obtained by comparing written criteria established by the LEA to make decisions about dissemination and adoption. The review process shall include defining significant information as it relates to the LEA's needs or goals.

(4) The LEA shall disseminate significant information acquired about special education practices, programs, materials or technology proven effective, ineffective, or even harmful for children and youth with disabilities through research or demonstration to:

(a) Teachers;

(b) Leadership personnel; and

(c) Related services personnel.

(5) The LEA shall make sure the use of any practice or product proven ineffective, inefficient, or harmful to children and youth with disabilities is discontinued.

Section 7. Adoption of Promising Practices. Each LEA shall adopt new programs, practices, materials or technology, as necessary, according to written criteria established to assess the appropriateness for use in the LEA. When new educational practices and products are initiated, the LEA shall:

(1) Develop written criteria for measuring effectiveness;

(2) Train personnel prior to initiating new programs or practices;

(3) Maintain data to assess effectiveness; and

(4) Use the data for decisions about continuing the practice or use of the product.

Section 8. Qualified Personnel. Each LEA shall employ or contract with qualified personnel, including leadership personnel, to provide specially designed instruction and related services, and ensure that all personnel necessary to implement the requirements of Part B of the IDEA are appropriately and adequately prepared.

(1) The LEA's program for recruiting, hiring, and retaining personnel shall be consistent with the state's requirements for certification, licensing, and registration which apply to any area in which an individual is providing specially designed instruction and related services.

(2) If two (2) or more applicants or contractors are available, the LEA shall employ the applicant or contractor who has, at a minimum, the entry-level requirement needed for any state-approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) The LEA shall make sure that personnel assigned as teachers of children or youth with disabilities who are not certified in the area for which they are providing services, have probationary, one (1)year provisional, or restricted certification in that area.

(a) The LEA shall make sure that personnel who are not fully certified are currently enrolled in a program to complete certification requirements.

(b) If a certified teacher is not available, the LEA shall:

1. Follow the procedures prescribed in 704 KAR 20:510 and 704 KAR 20:120; and

2. Make sure the teacher is notified of the requirements for certification renewal.

(4) If qualified personnel, including leadership personnel, vacate a position during the school year, the LEA shall fill the position with a qualified individual.

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: April 14, 1993

FILED WITH LRC: April 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 16, 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. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth R. Warlick

(1) Type and number of entities affected: 176 local education agencies; two state schools (Kentucky School for the Deaf and Kentucky School for the Blind); approximately 85,000 children and

youth with disabilities, or suspected of having disabilities, and their parents.

(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 effect upon competition: None

(b) Reporting and paperwork requirements: Paperwork and reporting requirements are not changed by this administrative regulation. Data on the number of personnel employed and needed is collected and reported each year in the annual data report required under Section 1418 of the Individuals with Disabilities Education Act.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: Local school districts should have complete and accurate local policies and procedures for compliance with the administrative regulation which will require less staff time in reviewing, monitoring, training, and providing technical assistance for compliance.

(b) Reporting and paperwork requirements: Less employee time in monitoring and follow-up to corrective action plans.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. 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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 USC 1413(a)(3), 1414, 1418; 34 CFR Part 300.

2. State compliance standards. This administrative regulation addresses the federal mandate to set forth in detail the policies and procedures which the state will undertake or has undertaken to assure that policies and procedures are established to ensure an adequate supply of qualified special education and related services personnel and that all personnel necessary to carry out the Individuals with Disabilities Education Act are appropriately prepared including a system for continuing education, acquiring and disseminating significant knowledge derived for educational research and other sources, and adopting, where appropriate, promising practices, materials and technology.

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require state and local education agencies desiring to participate in funding under Part B of the Individuals with Disabilities Education Act to establish policies and procedures for a comprehensive system of personnel development.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents, students or local education agencies than the federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation addresses the federal mandate and does not impose stricter, different or additional responsibilities on parents, students or local education agencies than the federal requirements.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 3:180. Instructions for insurer financial statements.

RELATES TO: KRS 304.3-240

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation requires insurers to complete annual financial statements according to instructions issued by the National Association of Insurance Commissioners.

Section 1. Insurers shall complete annual financial statements according to the National Association of Insurance Commissioners Annual Statement Instructions, Life and Health (December, 1992), and Annual Statement Instructions, Property and Casualty (December, 1992), both incorporated by reference and available for inspection and copying from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4: 30 p.m. (ET), weekdays.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: March 22, 1993

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

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for May 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 May 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: KRS 304.3-240(2) requires insurers' annual financial statements to be completed in the general form and context as approved by the National Association of Insurance Commissioners ("NAIC"). While this has been interpreted to mean that insurers shall follow the instructions issued by the NAIC, the statute does not specifically require that the NAIC instructions be followed. Therefore, this administrative regulation is being promulgated to make it clear that insurers are required to follow NAIC instructions in completing the annual statement.

(1) Type and number of entities affected: The proposed administrative regulation will apply to 1,200 insurers authorized to do business in Kentucky.

(a) Direct and indirect cost or savings to those affected:

1. First year: Costs will be minimal to none since insurers are currently following NAIC instructions to complete annual statements.

2. Continued cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed administrative regulation requires that insurers follow NAIC instructions in completing annual statements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Requiring insurers to complete annual financial statements according to NAIC instructions is a standard under the NAIC's Financial Regulation Accreditation Program. The purpose of the proposed administrative regulation is to make it clear that Kentucky meets this standard.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed administrative regulation: None

TIERING: Tiering is applied in that there are instructions for life and health insurers and instructions for property and casualty insurers.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of the State Fire Marshal

815 KAR 45:100. Volunteer fire department loan fund.

RELATES TO: KRS 95A.262(4), (5), (13), (14)

STATUTORY AUTHORITY: KRS 95A.240

NECESSITY AND FUNCTION: KRS 95A.262 authorizes the Commission on Fire Protection Personnel Standards and Education to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This administrative regulation is necessary to establish the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

Section 1. Definitions. (1) "Act" means KRS 95A.262.

(2) "Accessory equipment" means ladders, hoses, self-contained breathing apparatus, portable pump and hard suction hoses, nozzles, power extrication tools and protective equipment necessary to carry out the ordinary functions of supporting fire fighting activities.

(3) "Apparatus equipment" means pumpers, tankers and other large equipment used for fighting fires and emergencies. This equipment is more specifically categorized as follows:

(a) "Pumper" means any pumper which can pump 500, 750, 1,000, 1,250 or 1,500 gallons per minute at 150 pounds per square inch net pumping pressure.

(b) "Tanker" means a mobile water supply fire apparatus with a water capacity of 1,000 gallons or more and a minimum flow rate to pump connection of 500 gallons per minute except when a booster pump is provided.

(4) "Approved" means approved by the commission or its authorized designee for a particular purpose.

(5) "Commission" means as defined by KRS 95A.210.

(6) "Committee" means the loan committee of the Commission on Fire Protection Personnel Standards and Education.

(7) "Communications equipment" means equipment or system, or both, necessary for the transmission and reception of signals, by voice, required to support the operations of the volunteer fire department.

(8) "Eligible" means a volunteer fire department that has met the training requirements and is in good standing for receipt of state aid pursuant to 815 KAR 45:080 and the loan request requirements of this administrative regulation.

(9) "Emergency" means fire department equipment, apparatus or facilities have been damaged, destroyed or rendered inoperable and established firefighting capacity is reduced to a level affecting public safety.

(10) "Facilities" means any structure or portion of a structure intended for storage or protection of firefighting equipment and shall not include meeting halls, social rooms or any other facilities not directly related to firefighting, but including rooms or spaces designed and used for firefighting training.

(11) "Fund" means volunteer fire department low interest loan fund created pursuant to KRS 95A.262(14).

(12) "Local government" as defined by KRS 95A.210(3).

(13) "NFPA" means the National Fire Protection Association.

(14) "Protective equipment" means clothing or equipment used by firefighters which affords protection from injury to the wearer or user including, but not limited to, fire coats, boots, helmets and turnout pants.

(15) "UL" means Underwriters Laboratories.

(16) "Volunteer fire department" means a fire department recognized by the Department of Housing, Buildings and Construction upon recommendation of the commission, which has a membership consisting of less than fifty (50) percent of its members being full-time paid firefighters.

(17) "Volunteer fire department loan fund" means the fund established pursuant to KRS 95A.262(14).

Section 2. Eligibility. (1) A volunteer fire department may apply to the commission to receive low interest loans for the purchase of major equipment and facility construction pursuant to the requirements of this administrative regulation.

(2) Eligibility to participate in the loan fund shall be limited to those volunteer fire departments meeting the training requirements of KRS 95A.262(2), which continue in good standing to receive the state aid, and which the commission finds are unable to obtain loans from conventional financial institutions at the rate of three (3) percent.

Section 3. Loan Purposes and Prohibitions. (1) Purposes. The commission shall consider loans for the following purposes, only:

(a) Acquisition of apparatus equipment, communication equipment, accessory equipment or protective equipment; construction of new facilities; and modernization of existing facilities.

(b) Repair or rehabilitation of apparatus equipment where it has been determined that existing apparatus equipment no longer meets the standards of the NFPA and where the repair or rehabilitation, or both, of the equipment will bring it in compliance with NFPA standards.

(2) Prohibitions. A loan granted under this administrative regulation shall not be used for the following:

(a) Acquisition of existing facilities;

(b) Operating expenses;

(c) To reduce a debt or other obligation incurred before a loan is approved;

(d) For payment of fees for the designing or planning of facilities or preparation of application; or

(e) For investment or reinvestment.

Section 4. General Loan Requirements. (1) Loan period. A loan period shall not exceed twelve (12) years. The period of time for repayment of the loan shall depend upon the amount of the loan and shall be set forth pursuant to the loan agreement. Except in the case of approved emergency loans, the minimum amount of a loan shall be $5,000.

(2) Title of property. Any apparatus equipment or facilities financed by a loan from the fund shall be titled in the name of the volunteer fire department or in the name of the political subdivision with the commission as lien holder for the property. In the event the commission is supplying secondary funding, the commission shall become holder of a secondary encumbrance.

(3) Fire department matching funds. As a prerequisite to obtaining loans for facilities, vehicles or rehabilitation, the volunteer fire department shall verify the availability of unobligated funds in the amount of twenty (20) percent of the total cost of the facility, vehicle or rehabilitation.

(4) Repayment of loans.

(a) Interest on the principal amount of the loan shall accrue at the rate of three (3) percent per annum and shall be due and payable on the unpaid balance annually.

(b) The principal of the loan shall be repaid proportionally over the period of the loan.

(c) The principal and interest of the loan shall be payable at the office designated on the loan approval form, with the check made payable to the Kentucky State Treasurer.

(d) All payments shall be made before the close of business on the due date or they shall be considered delinquent.

(e) Delinquent accounts shall not receive further loans or grants for state aid or training facilities until the delinquency is cured.

(f) All or any portion of future state aid grants may be committed by the volunteer fire department to satisfy its loan agreement.

(g) Insurance. The volunteer fire department shall provide collateral protection insurance for the apparatus, equipment and facility construction sufficient to secure and protect the loan.

(5) Emergency loans. Eligible volunteer fire departments may be granted approved emergency loans pursuant to this administrative regulation.

Section 5. Loan Requirements for Fire Department Facility Construction. In addition to the other applicable requirements of the administrative regulation, requests for loans for fire department facilities shall meet the requirements of this section.

(1) Facility loans shall be granted only for establishing or modernizing those facilities that house firefighting equipment.

(2) Facility loans shall not exceed eighty (80) percent of the total cost of the construction of the facility or $50,000, whichever is less.

(3) Facility loans shall not be used for land acquisition.

(4) Facility loans shall not be granted or used for the refinancing of debts incurred or contracts entered into prior to the loan.

(5) Land title. The title to the land upon which facilities are to be constructed or modernized under the loan shall be in the name of the volunteer fire department or the local government which the volunteer fire department serves.

(6) Clear title. The volunteer fire department or the political subdivision for which the volunteer fire department provides service shall have clear title to the land upon which the facility is to be constructed or modernized.

(7) Real property liens. Concurrent with the receipt of the loan, the volunteer fire department shall provide a copy of the deed and execute a lien document to be filed in the county court clerk's office in which the property is located.

(8) Plans approval. Final plans for any construction shall be submitted for approval to the Department of Housing, Buildings and Construction or to an authorized local building official with a copy to the commission. The volunteer fire department shall be responsible for complying with the Kentucky Building Code, the Americans with Disabilities Act and other applicable laws. If any change to the plans or specifications is desired or required, the volunteer fire department shall furnish all additional labor and materials necessary to complete the project and the improvements in compliance with the changes to the plans and specifications.

(9) A certificate of occupancy shall be submitted to the commission by the volunteer fire department prior to release of loan funds.

Section 6. Apparatus Equipment. (1) Loan limits.

(a) The amount of a loan for the purchase of any single apparatus equipment shall not exceed $50,000 or eighty (80) percent of the total cost, whichever is less.

(b) The amount of a loan for the repair or rehabilitation for a single apparatus equipment shall not exceed $35,000 or eighty (80) percent of the cost of repair or rehabilitation, whichever is less.

(2) Apparatus loans. Apparatus loans shall be for the purpose designated in the loan request and approved by the commission for the following purposes:

(a) The purchase of firefighting apparatus equipment;

(b) The rehabilitation of existing apparatus equipment for the purpose of upgrading the apparatus to meet applicable National Fire Protection Association standards; and

(c) Repair of existing apparatus.

(3) Mandatory description or specification of equipment.

(a) New apparatus. The volunteer fire department shall submit one (1) complete set of specifications of the new apparatus.

(b) Repairs and rehabilitation. For the repair or rehabilitation of existing apparatus equipment, the volunteer fire department shall submit one (1) complete set of specifications along with three (3) estimates from qualified manufacturers for the repair or rehabilitation. If less than three (3) estimates are available, a statement shall be submitted explaining the reason why there are less than three (3).

(c) Purchase of used apparatus equipment. For used apparatus equipment, the volunteer fire department shall submit documentation of the type and quality of the equipment.

(d) Loans will only be granted on repairable equipment and apparatus which are not more than twenty-five (25) years old.

(4) Compliance with National Fire Codes. The volunteer fire department shall submit to the commission verification that new equipment is NFPA 1901-91 equipment.

(5) Prerequisite materials. Concurrent with receipt of the loan, the volunteer fire department shall record a lien on the affected vehicle title documents in the local county court clerk's office.

Section 7. Protective, Accessory and Communication Equipment. (1) Equipment loans shall be used for the purchase of protective, accessory and communication equipment, only.

(2) Equipment compliance.

(a) A volunteer fire department shall select protective and accessory equipment that shall be labeled as having been tested and listed by an approved nationally recognized testing agency.

(b) A volunteer fire department shall select communications equipment identified as meeting Federal Communications Commission regulations, 5 CFR Part 89.

(3) Security interest. The commission shall retain a security interest in the property for the life of the loan.

Section 8. Loan Request Procedure. (1) Each request for a low interest loan shall be made on the commission's Volunteer Fire Department Loan Form FPPSE-1, April, 1993, which is hereby incorporated by reference, and all information and documents required by the form shall be attached thereto by the applicant before filing with the commission.

(2) The administrator shall review the application and status of the volunteer fire department to determine if the minimum criteria for obtaining the loan has been met.

(3) The administrator shall notify the volunteer fire department of the disposition of its loan application, forwarding final forms to those eligible volunteer fire departments whose applications are satisfactory.

Section 9. Establishing Priorities. (1) Loans shall be reviewed for the applicant's stated purpose in the following order of preference:

(a) Requests for replacement or repairs of unsafe or unusable fire

apparatus, equipment or facilities.

(b) Requests for replacement of outmoded fire apparatus, equipment or facilities.

(c) Requests for additional apparatus, equipment or facilities because of unusual demands or present service.

(2) Priority shall first be given to applicants establishing the greatest need, utilizing the following criteria, not excluding other considerations.

(a) Financial need.
(b) Low economic base.
(c) Unusual fire hazards.
(d) County fire death rate.
(e) Population over sixty-five (65).
(f) Population growth.
(g) Tax exempt properties.
(h) New construction.
(i) Natural disaster.
(j) High mileage/usage.
(k) Existing equipment.

(3) Approvals shall be granted in order of need and availability of funds for each qualifying volunteer fire department.

Section 10. Formal Application and Qualification Procedure. (1) To qualify for a loan, an eligible volunteer fire department shall submit the commission's Volunteer Fire Department Form FPPSE-2, April, 1993, which is hereby incorporated by reference, together with the required documents attached, to the commission for final qualification.

(2) The commission shall render its decision at its next regularly scheduled meeting. Approved emergency loans may be granted prior to the regularly scheduled meeting.

(3) Any eligible volunteer fire department aggrieved by a decision of the commission, may petition the commission, in writing, for reconsideration and the commission, upon receiving the request, shall provide the applicant with an opportunity to be heard at its next meeting.

EDWARD J. HOLMES, Secretary
GERALD STEWART, Chairman

APPROVED BY AGENCY: April 1, 1993

FILED WITH LRC: April 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 25, 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 May 20, 1993, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 in which case the person requesting the transcript shall have the responsibility of paying for same. 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 by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wayne Jordan

(1) Type and number of entities affected: Approximately 700 volunteer or predominantly volunteer fire departments.

(a) Direct and indirect costs or savings to those affected: Loan recipient must pay three percent interest or administrative cost at the rate of 3 percent each year over the life of the loan and provide matching funds equal to twenty percent of the loan.

1. First year: Savings would be equal to the difference between the available loan interest rate and the three percent program administrative cost. Both costs and savings dependent on total amount loaned.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: (Note any affects upon competition) No identifiable additional factor at this time. Competition not a factor because loans will only be granted when alternate comparable funding cannot be obtained.

(b) Reporting and paperwork requirements: Loan application and documentation of required related information.

(2) Effects on the promulgating administrative body: Staff services necessary to evaluate, process and monitor the loans must be provided.

(a) Direct and indirect costs or savings: KRS 95A.262 provides that funds from the Firefighters Foundation Program Fund in the amount of $1,000,000 each year for ten years will be used for this program.

1. First year: Program in development and implementation stage and cost will be minimal in the first year.

2. Continuing costs or savings: Personnel cost could increase by approximately $60,000 a year once the program is fully implemented.

3. Additional factors increasing or decreasing costs: No additional factors identifiable at this time.

(b) Reporting and paperwork requirements: Appropriate records to oversee and service loans.

(3) Assessment of anticipated effect on state and local revenue: Funds from the Firefighters Foundation Program Fund in the amount of $1,000,000 each year for the next ten years will be used to support this program.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative selected provides most practical and least burdensome as determined by Commission on Fire Protection Personnel Standards and Education.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity or proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions:

(6) Any additional information or comments:

Was tiering applied? Yes. Tiering is applied in the since that loans are only available to volunteer fire departments that otherwise cannot obtain the same level of credit and they are granted on a need priority basis.

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? If yes, complete questions 2-4. Yes

2. State what unit, part or division of local government this administrative regulation will affect. Participating volunteer or predominantly volunteer fire departments only.

3. State the aspect or service of local government to which this administrative regulation relates. Fire and life safety.

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 purpose of the program is to provide low interest loans for the purchase of major equipment and construction

of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. KRS 95A.262 provides funds from the Firefighters Foundation Program Fund in the amount of $1,000,000 each year for the next ten years for the program and there should be no significant impact on local government expenditures and revenues except that matching funds equal to twenty percent of the loan must be provided by the volunteer fire department or local government toward completion of the project for which the loan was secured.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the April 1 and 2, 1993 Meeting

The April meeting of the Administrative Regulation Review Subcommittee was held on Thursday, April 1, 1993, at 2 p.m. and Friday, April 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 March 1 and 2, 1993 meeting were approved.

Present were:

Members: April 1, 1993: Representative Tom Kerr, Chairman; Senators Tom Smith, Nick Kafoglis and Gene Huff; Representatives Woody Allen, Jim Bruce and James Yates. April 2, 1993: Representative Tom Kerr, Chairman; Senators Gene Huff; Representatives Jim Bruce and James Yates.

Guests: George Russell, Anita Taylor, Registry of Election Finance; Beverly Watts, John Kelsey, Gwen Horton, Kentucky Commission on Human Rights; William P. Hanes, Pam Johnson, Kentucky Retirement Systems; Judy Mann, Maurice Turner, Bob Lee, Robert L. Blackburn, Kentucky Workers Compensation Funding Commission; Phil Shepherd, Hank Wiseman, Daniel Gray, Shelby C. Jett, Martha Hall, Bob Logan, John Hornback, Natural Resources and Environmental Protection Cabinet; Brenda Priestley, Louis Smith, Cheryl Robert, Robert Powell, Department of Corrections; Captain L. E. Fentress; Kentucky State Police; William M. Sawyer, Sandy Pullen, Transportation Cabinet; Kevin Noland, Robert N. Trahan, Jr., Betty Edwards, Ed Reidy, Department of Education; Donald B. Grugin, Jim Milich, Don Zeller, Alcoholic Beverage Control Board; Patrick Watts, Department of Insurance; Judith G. Walden, Department of Housing, Buildings and Construction; Barbara Coleman, Michael Cheek, Joyce Young, Charles Bratcher, Ked Fitzpatrick, Anita Moore, John A. Volpe, Vicki D. Jeffs, James P. Heth, Danna Droz, Ed Crews, Mark Cornett, Cookie Whitehouse, Cabinet for Human Resources; Hunter Hay, Kentucky Jailers Association; Don Stosberg, Kentucky Association of Homes for Children; Rick Foley, John Underwood, Kentucky Association of Heath Care Facilities; Lyle D. Cobb, Municipal Electric Power Association; Judith M. Haverilek, Quality Outdoor Advertising; Donnie Wilkerson, Wilkerson & Sons Supply; Robbie E. Bond, W. R. Vaughn, Southeastern Displays; John Griggs, KaCo; Paul Barrick, Kentucky Laborers Council; Ray Criden, Kentucky Cooperation Trust; Kipley J. McNally, American International Group, Inc.; David Nicholas, Board of Respiratory Care; Al Cross, Courier Journal; Carl Metz.

LRC Staff: Greg Karambellas, O. Joseph Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, and Don Hines.

The Subcommittee determined that the following administrative regulations, as amended, did not comply with statutory requirements:

Transportation Cabinet: Department of Highways: Maintenance

603 KAR 3:070. Advertising devices. Commission meetings and proceedings. Sandra Pullen represented the agency. The Subcommittee approved the following amendments, to which the agency concurred.

Section 1, the definitions section, was amended to comply with the drafting requirements of KRS Chapter 13A.

Section 3(1), Prohibited Advertising Devices, was deleted because KRS 177.863(1) lists Prohibited Advertising Devices on federal aid primary highways.

Section 4 was amended to list prohibited advertising devices as related to interstates and parkways.

References to Section 3(1) were amended to refer instead to the new material added in Section 4.

Following these KRS Chapter 13A conforming amendments the Subcommittee turned to discussion of the administrative regulation.

Judith Haverly, general manager of Quality Outdoor Advertising, from Hopkinsville, stated that she had been in the business for fourteen years, and that she felt that the rules had changed and that she believed that her company had been affected far more than any other company in the state because in western Kentucky there weren't many "urban areas" and that the Department says that they have made an honest mistake in that definition. She stated that she was affected in every market in western Kentucky that she has except for Hopkinsville, Princeton, and Madisonville. She said that she had been told that if the boards she has on the parkways blow down she can't rebuild them even though she has entered into long term contracts to lease the land.

Ms. Pullen, in response to a comment from Senator Smith, discussed the history of the state with the federal government in this area of signage, mentioning the "bonus agreement" of 1961 and the federal laws concerning protected areas. She stated that the states with a bonus agreement were required to comply with the most stringent of the provisions between the bonus agreement and the Outdoor Beautification Act. She said that in the 1970s Congress extended the provisions past 660 feet, to the horizon. and this is when a lot of billboards became nonconforming, and the federal government said they could remain as long as only routine maintenance was performed, which is defined in the bonus agreement. She stated that each billboard is evaluated separately.

In response to a question from Chairman Kerr, Ms. Pullen stated that the situation with billboards blown down remains the same under this administrative regulation and repair of vandalized billboards is now allowed as an extended right and that is only because the federal government allows that, but does not allow repair of those nonconforming ones that are blown down.

Ms. Haverly then addressed the issue that she had been legally permitted to erect billboards, that the state now says it made a mistake in the definition of "urban areas", that she can't repair them if they blow down, and she asks why they can't be "grandfathered in".

Ms. Pullen stated that for purposes of billboards only, parkways were considered interstates, but that distinction was blurred over time, and as new employees administered the program, permits were issued for the parkways that should not have been issued. Later, that mistake was recognized, and it was an honest mistake, and because of that the state is allowing those billboards to remain, to be "grandfathered in", but not to be reerected if they are blown down, she said. She added that the federal government is pushing the state to purchase these nonconforming billboards, and the only ones that the federal government will allow to be reerected are the ones that are vandalized.

Senator Kafoglis stated that he was in favor of allowing vandalized billboards to be reerected. Representative Bruce stated that would still be allowed until the end of the next General Assembly if a letter was attached . Senator Huff asked for the definition of routine maintenance. Ms. Pullen read the definition to the Subcommittee.

Representative Bruce made a motion that the administrative regulation does not comply with legislative intent and a second was made. Ms. Pullen voiced concern that the state could lose ten percent of its federal highway money if the state had no administrative regulation on this subject or one that was not in compliance with the federal regulations. Representative Bruce said that the agency could and should bring this before the entire membership of the General Assembly.

Chairman Kerr pointed out that the Subcommittee could always recall the regulation and remove the letter. He added that KRS 177.841 stated that erection or maintenance of these signs within 660 feet of the right of way is prohibited. Ms. Pullen said "Yes sir, under state law that is a problem." Chairman Kerr added that under state

law the regulation doesn't comply with the statute. Ms. Pullen said "you're saying the part about allowing a vandalized billboard to be reconstructed".

After a brief discussion, the vote was taken and the motion carried. Senator Huff reiterated his request for the department to ask the federal government for a revision of the definition of "routine maintenance". Ms. Pullen agreed to do that.

Department of Housing, Buildings and Construction: Local Fire Departments

815 KAR 45:020. Judith Walden was present to represent the agency. In the Necessity and Function Section the phrase "to be used in this chapter", relating to definitions, was deleted, and the second sentence was amended to specify that one reason the regulation was amended was to specify "the actual number of voting members" required for certain agency action.

After the administrative regulation was amended, during discussion, it was pointed out that KRS 95A.020 provides for 17 members on the Commission on Fire Protection Personnel Standards and Education and that KRS 95A.030 specifies that 5 members shall constitute a quorum. This regulation for certain decisions requires an affirmative vote of 8.

Ms. Walden stated that the statute requires 5 for the body to make any decision. Then she added that there was no law against establishing rules for how the body would govern itself on more important issues and require 8 affirmative votes on those issues.

Representative Bruce, acting chairman, asked if she would like to defer the regulation. Ms. Walden said she didn't know if there was a need to defer the regulation, and that the Fire Commission could make their own rules even if they don't put it in the regulation.

A motion was made, seconded and the motion passed that the administrative regulation be found deficient because it does not conform to statutory authority.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:090. Permanent committees, registration and fees. In Section 1, the Registry had defined "permanent committee" to include "federally registered out-of-state permanent committees". An objection to the reference was made because KRS 121.015(3)(c) and 121.170(5),(6),(7), did not appear to include federally registered out-of-state permanent committees. Section 1 of this administrative regulation was amended to exclude "federally registered out-of-state permanent committees" from the definition of "permanent committee", in order to comply with KRS 13A.120(2)(h) which prohibits the promulgation of an administrative regulation on a subject matter beyond the statutory authorization of an administrative body.

Commission on Human Rights: Human Rights

104 KAR 1:010. Posting, distribution and availability of notices and pamphlets. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) prescribing drafting and language requirements, in Sections 1, 3 and 4; and (2) KRS 13A.220(3)(f), requiring an administrative body to provide a brief statement setting forth the necessity for promulgating the administrative regulation and a summary of the functions intended to be implemented by the proposed administrative regulation.

104 KAR 1:020. Administrative proceeding. This administrative regulation was amended to comply with: (1) KRS 13A.222(4), prescribing drafting and language requirements; (2) KRS 13A.220(3)(e), governing the content of the RELATES TO paragraph, by deleting the reference to KRS 13A.100, because the RELATES TO paragraph requires a citation only of statutes to which the subject matter of an administrative regulation relates; and (3) KRS 13A.222(4)(a), requiring the use of plain and unambiguous words easily understood by laymen, to amend language found in Section 1(3)(a) relating to the computation of time for the filing of a complaint. The amendment made it clear that if an alleged discriminatory act is part of a continuing discriminatory practice, it shall be deemed to have occurred on a date subsequent to the commencement of the discriminatory practice.

104 KAR 1:030. Recordkeeping and reporting by employees, labor organizations and employment agencies. This administrative regulation was amended to comply with: (1) KRS 13A.220(3)(e), governing the content of the RELATES TO paragraph, by deleting the reference to KRS 13A.100, because the RELATES TO paragraph requires a citation only of statutes to which the subject matter of an administrative regulation relates; and (2) In Section 3(1), to comply with language and format requirements established in KRS 13A.220(4).

104 KAR 1:040. Guidelines for advertising employment or licensing opportunities. This administrative regulation was amended as follows: (1) The RELATES TO section was amended to include the citation of the federal statute governing "bona fide occupational qualification"; (2) a new Section 1 was inserted to cite the federal statute governing "bona fide occupational qualification"; and (3) Sections 1(1), 2(1), 3(1) and 6 were amended to conform to the drafting and language requirements established by KRS 13A.222(4).

104 KAR 1:050. Standards and procedures for providing equal employment opportunities. This administrative regulation was amended to comply with: (1) KRS 13A.220(3)(e), governing the content of the RELATES TO paragraph, by deleting the reference to KRS 13A.100, because the RELATES TO paragraph requires a citation only of statutes to which the subject matter of an administrative regulation relates; and (2) KRS 13A.2267, requiring the adoption without change of federal regulations that impose requirements but do not permit an administrative body to alter them or to select alternatives. This amendment was required because the Commission had inadvertently incorporated by reference five federal EEOC guidelines relating to discrimination because of religion, sex discrimination, employment selection procedures, discrimination because of national origin and individuals with disabilities.

104 KAR 1:060. Multiple dwelling developments reporting and recordkeeping requirements. KRS 344.250(2) requires persons subject to KRS Chapter 344 to make, keep and preserve records and report unlawful discriminatory practices to the Commission. This administrative regulation addressed only those reporting requirements for owners of developments of 25 units or more. The Commission had amended Section 5 to require "an owner of a housing accommodation covered by KRS 344.360 and not exempted by KRS 344.362 or 344.365", regardless of size, to maintain and retain records. Commission personnel stated that it would require only the owners of a dwelling development containing 25 of more units to report annually to the Commission.

Chairman Kerr stated that requirements of the statute seem burdensome and onerous for both the Commission and for owners of dwellings, regardless of size, who are required by statute to report to the Commission. The Subcommittee approved a motion pursuant to Chairman Kerr's recommendation that LRC be requested to refer the issue of the burdensome requirements to an interim joint committee, for possible amendment of KRS 344.250(2).

Senator Huff asked Commission representatives what the term "familial status", found in Section 5(2) means. The Commission responded that it refers to a family's size and age of children. The term was included in federal regulations to prohibit discrimination against people with children in both rental and sale of dwellings.

Chairman Kerr questioned the scope of federal occupancy restrictions and stated that he understood a person could establish a maximum number of occupants for a particular size unit, but could not restrict rental to a specific number of children. The Commission confirmed that reasonable occupancy restrictions are permitted under

the law for overall family size.

This administrative regulation was amended as follows: (1) In Sections 1(4) and 4, to comply with KRS 13A.222(4), establishing language and drafting requirements; (2) inserting a new Section 2 to comply with KRS 13A.220(4), establishing format requirements; (3) Sections 2 and 3 were deleted because the substance of these sections had been inserted into the new Section 2; and (4) inserting language in Sections 4(4)(b), 5, 6(2)(b),(3), and by deleting Section 4(6),(7) in its entirety because these sections would have modified the intent of KRS 344.250(2).

104 KAR 1:070. Records and reports for apprenticeships and training programs. This administrative regulation was amended as follows: (1) Sections 1(3) and 2(2) were amended to comply with the language and drafting requirements established by KRS 13A.222(4); and (2) delete the reference to KRS 13A.100 in the STATUTORY AUTHORITY paragraph because the STATUTORY AUTHORITY paragraph should cite only those statutes that grant regulatory authority over the specific subject matter.

104 KAR 1:080. Guidelines on fair housing. Section 1(1) contained a definition that "a person engaged in housing practices or real estate transactions is not limited to those persons regularly engaging in real estate as a business". Commission personnel stated that: (1) the statutory definition for "real estate operator" in KRS 344.010(8) uses the phrase "individuals engaged in the business of offering for rent or sell"; (2) the U.S. Housing and Urban Development (HUD) stated that it believed this definition limited the reach of federal fair housing laws, because it appeared to restrict them to persons "engaged in real estate as a profession"; and (3) HUD requested that Kentucky requirements be "substantially equivalent" to the federal minimum requirements. Commission personnel explained that the state statute is interpreted with uniformity to apply to an individual who might sell their own home, unless those individuals fall within the exceptions and exemptions found in KRS 344.362 and 344.365.

Subcommittee staff pointed out that KRS 13A.120(2)(e) and (f) prohibits the promulgation of an administrative regulation that repeats or summarizes a statute. Commission personnel agreed to an amendment to Section 1(1) that would cross-reference the definition of "real estate operator" in KRS 344.010(8), and include the federally required language subject to the provisions of KRS 344.362 and 344.365. The limitation of the definition that was made by including references to sections of KRS Chapter 344 was required to make it clear that the definition of "real estate operator" established by Kentucky law had not been amended.

104 KAR 1:090. Categories of protected persons required to fulfill reporting requirements. Sections 1(2),(3) were amended as to comply with the drafting and language requirements of KRS 13A.222(4).

104 KAR 1:100. Nondiscrimination on the basis of disability by place of public accommodations, licensing agencies, and trade organizations. The Commission had incorporated by reference major portions of Title III of the Americans with Disabilities Act. Commission personnel agreed to amend this administrative regulation to "adopt Title III (28 CFR 36, 56 F.R. 355.43, January 26, 1992) without change", pursuant to KRS 13A.2267, requiring the adoption without change of federal regulations that impose requirements but do not permit an administrative body to alter them or to select alternatives.

Kentucky Employees Retirement System: General Rules

105 KAR 1:120. Participation of agencies. Objections had been raised regarding: (1) format; (2) language; (3) statutory citations in the RELATES TO, STATUTORY AUTHORITY, and NECESSITY AND FUNCTION paragraphs that were: (a) incomplete; or (b) included all sections of KRS Chapter 78, instead of limiting citations to the specific statutes that governed or related to the subject matter of this administrative regulation; (4) the absence of definitions, or cross references to statutory definitions, of terms used in the body of the administrative regulation, such as "Board" and "CERS"; (5) the absence of a cross reference to administrative regulations that established the forms and reports that the person required to be designated by the provisions of Section 5 would have to make; (6) the vague standard established in Section 6 for the denial of participation in CERS if an agency's impact on the Retirement Systems would result in: (a) a "significant impact" on the actuarial soundness of the system; or, (b) "other adverse impact...not in the best interest of the...system"; and, (7) the requirement, in Section 6, that at least 50% of the employees of an agency, that elected to participate in CERS, shall elect to participate in CERS before the Board would accept the agency.

Mr. John Griggs, objected to the original version of this administrative regulation on the grounds that: (1) it granted the Board unlimited discretion to determine whether an agency would be allowed to participate in CERS because: (a) any impact on the Retirement Systems would be sufficient to deny participation; (b) denial of participation could be based simply on the fact that the average age of the agency's employees was greater than 40, therefore closer to retirement; and, (2) "adverse impact on the system" was too vague and exceed the criteria established in KRS Chapter 78 for participation in CERS. Mr. Griggs recommended that denial of participation should not be based on the vague standard, "adverse impact", but on a determination "by qualified taxing authority that...participation...would have an adverse impact on the program."

Pursuant to Mr. Griggs' objections, a previous administrative regulation governing participation of agencies in CERS had been withdrawn. This administrative regulation was intended to: (1) replace the previous administrative regulation; and (2) meet Mr. Griggs' objections, by requiring that a denial of an agency's participation in CERS by the Board shall be based on a finding that its participation would have: (a) an impact on the tax qualification of the Kentucky Retirement Systems; or, (b) a "significant impact" on its actuarial soundness.

Mr. Griggs stated that: (1) the amendments did not: (a) restrict the broad discretion of the Board; or (b) comply with the standards for participation established by statute; (2) that "adverse impact" is broad enough to exclude an agency because its employees were close to retirement, a result not permitted by statute; (3) "significant" added to "adverse impact" did not correct the problem, because "significant" is not defined except by the Board at its discretion.

Board personnel stated that the amendment adds "significant adverse impact". Mr. Griggs stated that "significant adverse" is not defined. Subcommittee staff stated that: (1) "significant adverse impact" is modified by "on the actuarial soundness" of the system; (2) the Board would have to show that its denial of participation was based on an impact that adversely affected and damaged the actuarial soundness of the retirement systems; (3) the Board would have to justify its denial of participation by showing that the adverse impact affects: (a) the financial stability of the retirement systems; (b) their qualification under federal requirements; or, (c) their ability to pay pensions. In response to a question by Mr. Griggs, Subcommittee staff explained that the: (1) Board has been granted: (a) broad authority to exclude an agency; and (b) to determine the criteria an agency must meet in order to be approved by the Board; (3) this authority is granted in KRS 78.510(3), a definitions section, and limits the broad right to elect to participate found in other sections of KRS Chapter 78. Subcommittee staff added that Board personnel stated that the Board agreed that the Board's discretion was limited to a showing that a denial of participation was based on the adverse impact on actuarial soundness, as discussed, and that any other criteria could not be imposed by policy and could be imposed only by being specifically included in an administrative regulation.

Mr. Griggs asked why an administrative regulation was needed, if the Board had been granted such broad authority under KRS Chapter 78. Subcommittee staff replied that the administrative regulation was required in order to: (1) establish a definite standard; (2) prevent the Board from basing its determination on vague criteria; and, (3) require the Board to base its determination on federal

requirements for participation and the actuarial soundness of the retirement systems. Subcommittee staff added that the deletion of the 50% requirement was requested because it was not shown to have an effect on the actuarial soundness of the retirement systems.

Board staff said that most counties have, or would participate, and that the provisions of this administrative regulation would not prevent their participation.

Mr. Griggs was invited to offer additional language to further establish stricter standards by which to limit the Board's discretion. He stated that, as explained, the amendments appeared to help. Mr. Griggs was informed that he could request the Subcommittee to reconsider this administrative regulation if, in its implementation after it became effective, he believed it was being improperly administered or that the Board was exceeding its authority.

Chairman Kerr stated that he believed the real problem was with the broad authority granted the Board by KRS 78.510(3), and the attempts to define that authority more precisely, and that the administrative regulation as amended was tighter than the statute.

The Subcommittee approved a motion to amend this administrative regulation as follows: (1) In the RELATES TO and STATUTORY AUTHORITY paragraphs, amend the citation of statutes to include only those sections of KRS Chapter 78 that specifically relate to or authorize regulation of participation in the Kentucky Retirement Systems by counties; (2) In the NECESSITY AND FUNCTION paragraph, amend the reference to statutes by: (a) deleting the broad reference to "statutes"; and, (b) specifying the KRS Chapters that require the promulgation of this administrative regulation; (3) In Section 1, insert a cross reference to the statutory definitions for "Board" and "CERS", because these terms are used in the administrative regulation and not defined; (4) In various sections, correct words and phrases to comply with the language requirements of KRS 13A.222(4); (5) In Section 2, in order to establish clear standards by which the Board shall exercise its discretion, provide that participation may be denied if participation would have an "adverse impact" or "significant adverse impact" on the: (a) tax qualification of CERS under federal law and regulation; and (b) the actuarial soundness of CERS; (6) In Sections 2,3,4, and 5, delete existing language and insert new language to: (a) comply with the format requirements of KRS 13A.220(4) and 13A.222(4); and (b) establish clear standards for participation and the trial period; (7) In Section 5, insert cross references to the administrative regulations establishing the forms and reports referred to in Section 5; and (8) In Section 6, delete the requirement for participation in CERS by 50% or more of the employees of an agency that elects to participate in CERS, because it is not: (a) based on actuarial requirements; or (b) required by federal law or regulation or to insure the fiscal soundness of the Kentucky Retirement Systems.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Resources

Secretary Phillip Shepherd, Shelby Jett, and Bob Logan appeared before the Subcommittee representing the Cabinet. There are several clarifying amendments to these administrative regulations which consist of three basic amendments which are repeated through out the regulations. These amendments are: (1) for clarity in the permitting approval time frame for action being imposed on the agency; (2) to tie the information required from applicants to the definite standard of that which is required by "applicable statutes and administrative regulations"; and (3) to clarify that if there is an extension of the time allowed for the agency permitting review and approval process, it shall be "agreed to: by the Cabinet and the applicant.

Representative Bruce asked for an explanation of what the Cabinet was doing concerning water quality.

Secretary Shepherd stated that all of these regulations are to implement HB 575 passed in the last session. He stated that with regard to water this would have to do mainly with the pollution discharge emission permits.

Senator Smith stated that he didn't feel that these regulations would really speed up the process.

Each administrative regulation was amended to adopt the clarifying amendments and each was approved without objection.

401 KAR 4:300. Permit timetables for Title 401, Chapter 4.

Water Quality

401 KAR 5:300. Permit timetables for Title 401, Chapter 5.

Public Water Supply

401 KAR 8:101. Approval timetable for Title 401, Chapter 8.

Division for Waste Management: Hazardous Waste Permitting Process

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

Special Waste

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

Solid Waste Facilities

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

Justice Cabinet: Kentucky Community Corrections Grant Program

500 KAR 10:020. Administration and application procedure for community corrections grant program. KRS 196.700(5) and KRS 196.720 provide that grants under the Community Corrections Programs are to be awarded to agencies in "judicial circuits." This administrative regulation referred to "judicial districts". KRS 13A.120(2)(i) prohibits the promulgation of an administrative regulation that modifies a statute. Sections 1 and 2 of this administrative regulation were amended to delete "district", and to insert "circuit" in lieu thereof.

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Policy CPP 8.1, incorporated by reference in this administrative regulation was amended to comply with the language requirements established in KRS 13A.222(4)(b), and to delete redundant phrases, as follows: (1) Page 1, IV. A. & B., by deleting "be required to"; and (2) Page 2, IV. B. 2.D., by deleting "must" and inserting "shall" in lieu thereof.

501 KAR 6:060. Northpoint Training Center. An objection had been raised to Policy NTC 01-10-01, governing the service of summons on Department of Corrections employees, because the language was broad enough to appear to require that summons served on Department employees, relating to lawsuits regarding employee acts unrelated to the scope of their employment, be taken to the warden.

NTC 01-10-01 was amended as follows: (1) PURPOSE paragraph was amended to delete "Cabinet" and to insert "Department" in lieu thereof; (2) "If" was inserted in lieu of "where", pursuant to the language requirements established in KRS 13A.222(4)(i); and (3) language was added to make it clear that employees are required to take only "employment-related" summons to the warden.

501 KAR 6:130. Western Kentucky Correctional Complex. KRS 72.020(1) provides that the coroner shall be notified immediately upon the discovery of a body. An objection had been raised to Policy WKCC 13-02-01, Page 14, M., because it: did not: (1) provide for immediate notification of the coroner; and (2) require the person finding the body to make the notification. With regard to objection (2), it was pointed out that KRS 72.020(1) provided that any "person, hospital or institution" finding a body would make the notification. WKCC 13-02-01 was amended to provide that the warden and the coroner shall be the first two people notified.

Department of State Police: Candidate Selection

Captain Larry Fentress, counsel, appeared representing the agency. He stated that these regulations have been written to comply with the nondiscrimination provisions of the federal American Disabilities Act (ADA).

Several amendments to the regulations were adopted by the Subcommittee, most being technical amendments to comply with KRS Chapter 13A or for clarification.

502 KAR 45:005. Definitions. This definition administrative regulation was reformatted to comply with KRS Chapter 13A.

502 KAR 45:015. Qualifications. Section 7 of this regulation was clarified to comply with the ADA.

Senator Smith commented on hiring age qualifications mentioning that this appeared to be discrimination based on age and asked if this practice was going to be continued.

Captain Fentress stated that the federal law contained an exception for police departments, fire departments and state universities. He said "most of us" believe this exemption will not be continued, and if it is not reenacted federal law will preempt the KRS Chapter 16 age requirement. He said if that happens the only age requirement would be the minimum age of 21 so that they could carry a firearm.

He stated that currently by Kentucky law the maximum age to be hired as a trooper is 31 and a trooper can only serve until age 55.

502 KAR 45:025. Disqualifications. Section 1 was amended to comply with the drafting requirements of KRS Chapter 13A. Section 1(11) was amended to clarify that if an applicant tests positive on a specimen test it will be "as determined by" the test.

502 KAR 45:035. Application. The form incorporated by reference was corrected to give the exact name of that form. In Section 2, relating to submitting an application, the requirement for submitting that form "in a timely manner" was changed to require the application to be submitted "by the specified due date".

502 KAR 45:045. Written examination. This amendment deletes a sentence that it was agreed will be better located in another administrative regulation.

Senator Huff asked what is the acceptable level on the oral exam, to which Captain Fentress replied that 30 is the highest possible but so many apply that unless an applicant scores 28 or above he won't usually be high enough on the register to be considered.

In response to a question from Representative Bruce, Captain Fentress stated that in case of a tie, the selection was made by drawing by lot.

502 KAR 45:055. Oral interview. There is a grammatical correction, and in Section 2(2) it is amended to indicate that 5 is the highest score and 0 is the lowest score.

502 KAR 45:075. Register. Section 2 was amended to insert the sentence that was deleted from 502 KAR 45:045. That sentence states that the written exam score and the oral interview score are to be combined to determine placement on the register. With the written score constituting 40 percent of the final score and the oral interview constituting 60 percent. Additionally the phrase "with veterans receiving preference in accordance with the provisions of KRS 16.040(3)" being added to conform to the authorizing statute. Section 3 was amended to comply with the ADA concerning representation by minorities. Section 5 was amended to comply with the language requirements of KRS Chapter 13A.

502 KAR 45:115. Appeals. A phrase was deleted that specified that "no party to appeal shall recover attorney fees. It was felt that this phrase was inappropriate and not statutorily authorized.

Department of Education: Office of School Administration and Finance: Bureau of Learning Results Services

703 KAR 4:010. The formula for determining successful schools. This administrative regulation had been deferred at the March Subcommittee meeting on Chairman Kerr's recommendation to allow Subcommittee members an opportunity to review the recently obtained Department of Education document entitled, "Creating Thresholds From KIRIS Data, (December 2, 1992)".

At the March meeting, Chairman Kerr asked Department personnel if the complete formula for determining successful schools was incorporated in this administrative regulation, or whether the document in question contained additional descriptive information that was necessary to better understand the formula.

At the April meeting, this administrative regulation was amended to: (1) conform to KRS 13A.222(4)(a), which requires an administrative body to use plain and unambiguous words that are easily understood by layman; and (2) to insert a new Section 15 to incorporate the KIRIS document.

Department of Housing, Buildings and Construction: Kentucky Building Code

815 KAR 7:010. Administration and enforcement. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements, deleting: (a) superfluous words in the Definitions section; (b) references to "It shall be unlawful" throughout the administrative regulation and inserting "shall not"; and (2) KRS 13A.220(3)(e) by adding a citation to the RELATES TO section to reference "815 KAR 7:025".

815 KAR 7:025. Kentucky Building Code. This administrative regulation was amended in Sections 2(2) and 6(3) by referencing "The Kentucky Building Code".

Hazardous Materials

815 KAR 30:060. Certification of underground petroleum storage tank contractors. In response to Acting Chairman Bruce's request for an explanation of the proposed amendments, Department personnel stated that the amendments related to: (1) technical changes requested by LRC staff; and (2) Department clarification of the language relating to insurance requirements recommended by the Department of Insurance.

The Subcommittee approved a motion by Representative Yates to approve the following amendments: (1) amend Sections 6(1);7(1),(2),(3),(5); and Section 9(2)(a) to comply with the provisions of: (a) KRS 13A.222(4)(b) requiring the use of "shall" to express a duty, obligation, or prohibition; (b) KRS 13A.222(4)(g) requiring the use of the present or perfect tenses; and (2) amend Section 11, Item 17., to require: (a) a surety bond from a "Kentucky authorized company" rather than a "Kentucky licensed company"; and (b) certificate of insurance from "an authorized insurer countersigned by a licensed Kentucky agent", rather than from "a licensed Kentucky agent".

Senator Smith stated that it appeared the administrative regulation established different types of certification of underground storage tank contractors. Department personnel stated that the types were for installations and removals, and that full certification permitted both installation and removal. In response to a question by Senator Smith concerning insurance requirements relating to liabilities varying with the type of certification, Department personnel stated that the requirements were the same for all types. In response to a question concerning the different passing examination scores established by Sections 7 and 8, Department personnel stated that: (1) previously, the same experience requirements existed for removal and full certification as an installer; (2) this excluded for removal certification, those who had the proper training but less experience; (3) these different scores allowed installers to serve a probationary period of one year, without having met the full experience requirements if: (a) a higher score was made on the test; (b) every installation was approved by the Department of Housing; and (c) if an additional $100 payment in addition to the fee charged for certification based on the experience requirement. Department personnel added that this: (1) permitted more people to enter the business; (2) satisfied training and knowledge requirements; (3) insured public protection because of the increased oversight: and (4) would reduce the cost by increasing the numbers of those who could remove.

The Subcommittee approved the administrative regulation as amended.

Local Fire Departments

Numerous changes for clarification and conformity to the drafting requirements of KRS Chapter 13A were made to the following administrative regulations.

815 KAR 45:035. Education incentive.

815 KAR 45:050. Requirements for obtaining firefighter's training

facility grants.

815 KAR 45:080. Volunteer fire department aid.

815 KAR 45:090. Certification and qualifications of fire protection instructors.

Cabinet for Human Resources: Department for Health Services: Radiology

902 KAR 100:040. General provisions for specific licenses. This administrative regulation was amended to: (1) conform to KRS 13A.222(4)(c) that requires the use of the word "shall" to express an obligation, duty or prohibition; and (2) in Sections 4(1) and 8(3)(d), incorporate forms by reference pursuant to KRS 13A.224.

Department for Social Insurance: Public Assistance

904 KAR 2:006. Technical requirements; AFDC. This administrative regulation was amended: (1) in Section 2(4) to conform to KRS 13A.222(4), prescribing language and format requirements; and (2) in Section 10(5) to delete an incorrect cross reference.

904 KAR 2:111. Repeal of 904 KAR 2:110. The NECESSITY AND FUNCTION paragraph was amended to delete the reference to the federal Private Resettlement Program (PRP) because this program was withdrawn by the federal government for lack of funds.

Department for Social Services: Aging Services

905 KAR 8:090. Personal care assistance services. This administrative regulation was amended as follows: (1) typographical errors were corrected in the NECESSITY AND FUNCTION paragraph and Section 12(1)(a); and (2) the terms "program district" and "service area" were amended by deleting "district" and inserting "service area" after the word "program".

Department for Medicaid Services

907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services. Representatives of the Kentucky Nursing Home Association stated that the Cabinet for Human Resources was required to make payments on the basis of rates "which have been determined by the cabinet to be reasonable and adequate" pursuant to the federal requirements. Section 3(1) of this administrative regulation was amended to insert a reference to the federal requirements found in 42 USC 1396a(a)(13)(A).

The Subcommittee determined that the following administrative regulations complied with KRS Chapter 13A:

Kentucky Board of Respiratory Care

201 KAR 29:050. Continuing education requirements.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:040. Kentucky State Penitentiary.

Department of State Police: Candidate Selection

502 KAR 45:065. Background investigation.

502 KAR 45:085. Medical examination.

502 KAR 45:095. Psychological assessment.

502 KAR 45:105. Appointment.

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

Education, Arts and Humanities Cabinet: Department of Education: Office of Learning Programs Development: Instruction

704 KAR 3:035. Annual professional development plan.

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:310. Caterer's license.

Department of Insurance: Rates and Rating Organizations

806 KAR 13:120. Workers' compensation deductible policies.

Department of Housing, Buildings and Construction: Elevator Safety

815 KAR 4:010. Annual inspection of passenger elevators.

815 KAR 4:025. Permit fees for new and altered elevators.

Standards of Safety

815 KAR 10:040. Fire prevention code.

Local Fire Departments

815 KAR 45:060. Survivor benefits for death of a firefighter.

Volunteer Fire Department Aid Fund

815 KAR 46:011. Repeal of 815 KAR 46:010.

Cabinet for Human Resources: Department for Health Services: Controlled Substances

902 KAR 55:090. Exempt anabolic steroid products.

Department for Social Insurance: Public Assistance

904 KAR 2:370. Technical requirements; job opportunities and basic skills.

Food Stamp Program

904 KAR 3:060. Administrative disqualification hearings and penalties.

Department for Social Services: Community Action Services

905 KAR 6:060. CSBG audit specifications.

905 KAR 6:070. Program state plan for CSBG.

Department for Medicaid Services

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

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

907 KAR 1:061. Payments for medical transportation.

907 KAR 1:376. Incorporated by reference of the hospital services manual.

907 KAR 1:414. Incorporated by reference of the dental services manual.

Department for Mental Health and Mental Retardation Services: Mental Health

908 KAR 2:040. Hospital district assignments.

Institutional Care

908 KAR 3:110. Policies and procedures of Central State Hospital.

908 KAR 3:180. Policies and procedures of Oakwood.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the April meeting, unless otherwise noted, upon agreement by the promulgating agency and the Subcommittee:

Agricultural Experiment Station: Seed

12 KAR 1:005. Definitions.

12 KAR 1:010. Sampling, analyzing, testing, and tolerances.

12 KAR 1:025. Maximum weed seed content permitted.

12 KAR 1:055. Identification of seed or seedlings or finished plants not for sale.

12 KAR 1:060. Manner of labelling seed, seedlings, or finished plants.

12 KAR 1:065. Lawn, turf mixtures; labeling.

12 KAR 1:075. Types of labeling; tag label form.

12 KAR 1:080. Use of own tags; permit, report.

12 KAR 1:085. Illegal labeling and sales.

12 KAR 1:090. Stop sale orders.

12 KAR 1:095. Impound seed, tobacco seedlings or finished tobacco plants.

12 KAR 1:100. Records.

12 KAR 1:105. Schedule of charges.

Kentucky Information Systems Commission: Information Systems

14 KAR 1:010. Statewide strategic plan for information processing.

Finance and Administration Cabinet: Kentucky Workers Compensation Funding Commission

200 KAR 19:010. Payment of audit by taxpayer.

200 KAR 19:020. Assessments of insurance policies offering deductibles. Mr. Lee read a letter from Representative Riggs, Vice Chairman Interim Joint Committee on Banking and Insurance, in which Representative Riggs stated that, as a cosponsor of legislation requiring insurers to offer deductibles on workers' compensation, he felt this administrative regulation: (1) changed legislative intent, by applying to the Special Fund assessment tax to a nonexisting premium that a company does not pay; (2) an insurer receives a premium amount, net of any credits or discounts applied, and the Commission is applying the assessment on a premium amount that ignores the discount or credit, thus applying it on a fictitious premium amount that was never received by the insurance carrier; (3) this increases workers' compensation assessments costs to employers, contrary to the intent of the legislation enacted by the General Assembly; and, (4) exceeded the authority granted by KRS 342.122, governing the Commission, because the statute allows only the imposition of an assessment on the "amount of workers' compensation actually received", while the Commission: (a) assesses amounts within the deductible although the deductible does not have premiums associated with it; and (b) requires insurers to pay assessments on the deductible portion of a policy retroactively.

Mr. Lee stated that: the Commission had: (1) not exceeded its statutory authority; (2) coordinated Commission policy with the insurance industry through a task force consisting of ten insurance companies, two of whom represent between three and five hundred insurance companies; (3) been requested by the industry to address problems related to deductibles; (4) discussed this administrative regulation with the office of the Commissioner of Insurance, who assured the Commission that an administrative regulation it was preparing was consistent with this administrative regulation and in agreement with its provisions; (5) fulfilled its fiduciary obligation.

Mr. Lee offered to defer this administrative regulation if the Subcommittee felt it needed time to consider the issues raised.

Mr. McNally, speaking on behalf of the American Insurance Group (Group), stated that: (1) the Group was not involved in the development of this administrative regulation; (2) this administrative regulation: (a) violated applicable statutes; (b) exceeded statutory authority by amending, in effect, explicit statutory provisions; and (c) was unconstitutional; and (3) the Subcommittee should recommend that this administrative regulation be deferred in order to be revised.

Mr. McNally read a statement on behalf of the Group: (1) objecting to the inclusion in the premium reported and assessed for deductible policies, of the premium that would have been charged for the first dollar statutory coverage without the deductible; and, (2) stating that: (a) this was a fictitious premium; (b) KRS 342.122 provided for a cash assessment accounting, which the administrative regulation violated by: 1. assessing money never received, for coverages that were never provided; 2. requiring insurers to compute a fictitious premium based on fictitious coverage, and pay a quarter of revenue they did not receive to the state. Mr. McNally stated that: (1) the statute permitted an assessment only on premiums actually received; (2) the assessment was not based on premiums actually received by the insurer; and (3) in order to comply with the constitution, only actual revenue or income may be assessed. He added that the statutes provide: (1) the Special Fund assessments would be collected concurrently with the premiums from the insured; and (2) the insurer will send a bill to the insured with the Special Fund assessment stated separately, so that it could be collected from the insured, but that the insured will not be billed for what is, in effect, a fictitious premium. Mr. McNally stated that the statutes provide for a refund of a premium, for cancellation or other reason, to the insured. Under the provisions of this administrative regulation, the assessment is on a fictitious premium that will not have been paid by the insured, and the insurer will not be able to receive a refund of the assessment based on the fictitious premium. Mr. McNally quoted from a March 10, 1993 letter from Mr. Lee notifying insurance carriers that this premium would be imposed on a revised form for the first quarter of 1993, and stated that this meant that: (1) the provisions of this administrative regulation have been enforced retroactive to the effective date of the administrative regulation; and (2) because insurance carriers have not had the opportunity to bill or pass through this assessment to their insured, they would be prohibited by KRS 342.122(5) from collecting the assessment on the fictitious premium from an insured because it would be an amount that exceeded the assessment percentages in effect at the time their statement was sent to the insured.

Mr. Blackburn stated that the provisions of this administrative regulation: (1) were not being implemented retroactive to its effective date; (2) the premium that should have been collected had not been collected; and (3) that they were designed to insure the correct collection of premiums.

Mr. McNally stated that the Commission's statutory duty was to manage the funds collected, and that it was the duty of the Department of Insurance, not the Commission, to correct a perceived abuse in the type of workmens' compensation products offered by insurers.

Chairman Kerr asked whether, under the: (1) legislation enacted by the General Assembly, an insured was granted the right to elect a policy with a deductible; and (2) administrative regulation, the Special Fund can charge an assessment based upon what the total premium would have been if the deductible had not been elected. Mr. McNally stated that this was correct, and that was why he characterized the premium upon which the assessment was based as "fictitious".

Mr. Blackburn stated that the Commission: (1) recognized that its duty was to acquire the statutorily mandated $110 million annually; (2) the rates must be set to acquire this amount; (3) did not intend this administrative regulation to provide for a greater sum; and (4) felt this administrative regulation would prevent some employers from having to assume the burden for other employers, was "industry neutral", and does not shift the liability burden. Mr. Blackburn presented the Subcommittee with charts illustrating the differences between a true deductible insurance policy and the type of deductible policy under workers' compensation which he called a "mock deductible". He stated that the latter is not a deductible policy because in statutorily mandated coverage, the liability includes the full first dollar statutory cover and they are obligated to pay under or above the deductible. Mr. Blackburn added that: (1) this administrative regulation attempts to create the premium that existed when House Bill 1 was enacted by the 1987 General Assembly; (2) at that time, there was only one insurance policy product on the market in Kentucky, and that it: (a) did not provide for a deductible in workers' compensation, (b) was simply the premium required for workers' compensation coverage, and (c) that insurance carriers had been informed that whatever was paid for whatever reason was considered premium; and (3) the new insurance policy product that provided for a deductible still requires a premium, although it allows payment of the premium at a later date and in a different form.

Mr. Blackburn stated that a "mock deductible" involved: (1) purchase of insurance and compensation for first dollar statutory coverage; and (2) payment by the insurer, followed by reimbursement by the employer at a later date of the amount attributable to the deductible, He added that: (1) nonpayment of the deductible is considered nonpayment of premium; (2) upon cancellation for nonpayment of premium, the amount of premium paid by the insured will be reduced by an amount necessary to reimburse the insurer for the deductible it paid, and for which it was not reimbursed by the insured; and (4) this administrative regulation prevents the burden

caused by those who do not reimburse the insurer, for the amount paid that is attributable to the deductible, from being shifted to other insureds who do not have a deductible policy and the self-insureds.

Chairman Kerr asked whether failure to establish the policy contained in this administrative regulation would result in the cost of funding the Special Fund would being paid by small employers who cannot afford a deductible policy. Mr. Blackburn stated that everybody was offered some deductible, and that small employers would not want to take on many of these deductible occurrences because of the cost to them.

Representative Allen asked Mr. Lee various questions relating to Mr. Lee's qualification, background, appointment, political contributions or the lack thereof.

In response to a question by Senator Huff, Mr. Lee stated that only one written response had been received, and that no one had requested to attend the Commission's public hearing that was scheduled pursuant to KRS 13A.270.

Senator Smith expressed his concern for the state's employers and asked whether: (1) they had been informed of the public hearing; (2) the public hearing had been advertised; and (3) employers had an opportunity to comment upon the administrative regulation. He asked whether self-insured employers were affected. Mr. Blackburn stated that self-insured employers do not have deductible policies. Senator Smith asked whether the determination of the premium differed from its determination under normal deductible policies, in which the premium assessed depends upon the deductible. Mr. Lee stated that whether the policy was a deductible or nondeductible policy, the exposure of the employer was the same, that this administrative regulation insured that the cost for the Fund was spread equitably among employers and that the failure to reimburse for the insurer's payment of the deductible would not be shifted to other employers.

The Subcommittee and Commission agreed to Chairman Kerr's recommendation that this administrative regulation be deferred to the May, 1993 Subcommittee meeting, in order to permit the Subcommittee and its staff to review the issues raised.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:180. Firm registration.

201 KAR 18:190. Continuing education.

Economic Development Cabinet: Department of Agriculture: Pesticides

302 KAR 31:030. Fine schedule for violation of KRS 217B.550.

302 KAR 31:035. Fine schedule for violation of KRS 217B.120.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Standards of Performance

401 KAR 63:035. Gasoline dispensing facilities, stage II.

Justice Cabinet: Department of Corrections: Jail Standards

501 KAR 3:010. Definitions. This administrative regulation was amended as follows: (1) In Section 1(11),(13),(14) the word "is" was deleted and "means" was inserted in lieu thereof to comply with KRS 13A.222(4)(d),(e); and (2)In Section 1, the words "deck" and "ceiling" were defined in clear and unambiguous language as required by KRS 13A.222(4)(a).

501 KAR 3:030. Fiscal management. This administrative regulation was amended to permit jail canteens to sell items that were previously supplied to inmates. This amendment was required to permit the jail to sell such items, and to offer a choice of differing brands.

Representative Bruce asked if an audit was performed on monies received from the sale of canteen items. Cabinet personnel stated that all profits from the sale of canteen items must be used for education and recreation of the inmates in the institution.

Cabinet personnel agreed to a suggestion by Representative Bruce that an audit of the moneys and a report of funds received from the canteen be submitted to the Cabinet.

501 KAR 3:040. Personnel. This administrative regulation was amended to delete the proposed amendments in Sections 3 and 6 and retain the existing language. The language clarifies that minimum wage is to be paid to jail employees.

501 KAR 3:050. Physical plant. This administrative regulation was amended to: (1) delineate the different phases of a jail construction and renovation project; (2) express mandatory obligations with the word "shall", pursuant to KRS 13A.222(4)(b); and (3) delete the provision which requires this administrative regulation become effective on January 1, 1983, pursuant to KRS 13A.330 which provides that an administrative regulation shall become effective: (1) adjournment on the day it is considered by a legislative subcommittee; or (2) within 30 days of referral to that subcommittee by LRC, if the subcommittee fails to meet within the 30 day period.

The initial review raised the issue of overcrowding. This administrative regulation permits additional bunks, not to exceed 16, to be added to a dormitory if each inmate has 50 square feet of jail space.

Representative Allen asked whether Kentucky's jail standards were based on federal guidelines or whether Kentucky had devised its own standards. He stated that the jails in Edmunson and Ohio Counties are closed because they do not meet Kentucky's jail standards.

Cabinet personnel stated that in 1992 the General Assembly amended KRS Chapter 441 to require the appointment of a Jail Standards Commission to review all existing jail standards in the state of Kentucky by December 31, 1992. The Commission is composed of equal numbers of county and state appointees. The administrative regulations before the Subcommittee are a result of the Commission's work.

In response to a question from Representative Allen cabinet personnel pointed out that there are no federal standards that specifically relate to state jails. Lawsuits were filed by inmates in 1982 because Kentucky did not have any jail standards. In the course of the litigation the court had to look at the American Correctional Association (ACA) standards in analyzing Kentucky facilities because Kentucky had no standards of its own.

Representative Allen asked if the state standards were more stringent than the Federal standards. Cabinet personnel stated that some state standards are less stringent than the federal standards but, on the whole, state standards were not more stringent than the federal standards.

Representative Allen asked whether the federal standards were less stringent than in 1982. Cabinet personnel stated that the Commission looked at federal requirements and made an attempt in these amendments to more closely reflect the federal or ACA guidelines.

Representative Allen stated: (1) that Ohio county had a fairly good building but could not open because there were no recreational facilities; (2) inmates seem to have a better life in jail than out; and (3) some states have inmates living in tents, and allow work. He stated that for some reason, Kentucky is not allowed to permit such living arrangements and work details. Cabinet personnel stated that most of the state requirements are the result of federal lawsuits filed by inmates in a number of jurisdictions, and that this resulted in a variety of standards and requirements.

Representative Allen asked if the Department of Corrections believes in a regional jail system. Cabinet personnel stated that: (1) Johnson County has the only regional jail; (2) use of that jail has been tied up in litigation for years; (3) other counties have jails funded by a regional jail bonding authority and are owned by the county.

Representative Bruce asked if the Jail Standards Commission (Commission) was responsible for the changes before the subcommittee today. Cabinet personnel stated that the amendments relate to standards promulgated by the original Commission in 1983. Repre-

sentative Bruce stated that the Subcommittee may want to find these administrative regulations deficient in order to ensure that the General Assembly considers raised during the 1994 regular session.

Senator Smith stated that: (1) there is a serious overcrowding problem in Hardin County jail; (2) the Department is pushing Hardin County to build a new facility; (3) some inmate work details are used in Hardin County but the work detail is not being fully utilized because of state prohibitions; and (4) Hardin County has already spent several hundred thousand dollars in the renovation of its jail facility. Senator Smith further stated that the General Assembly always gets the blame if there are problems with the jails and therefore should review these administrative regulations completely before approving them. Cabinet personnel pointed out that these administrative regulations are the first step toward making state jail standards better for the counties.

Representative Allen made a motion to find 501 KAR 3:010 to 501 KAR 3:150 deficient. The motion was seconded by Representative Bruce. Representative Allen stated that: (1) he felt the standards the state was imposing were more stringent than those required by federal law; and (2) these administrative regulations should be reviewed by the entire General Assembly at its next regular session.

Representative Kerr stated that a finding of deficiency may require the codification into statute of these administrative regulations.

Representative Allen stated he was concerned that these changes were imposed by state executive branch policy and were not federally required.

Cabinet personnel stated that these administrative regulations were the result of the adoption of: (1) the National Fire Prevention Association Code; and (2) other health and safety requirements; and (3) compliance with federal court decisions.

Hunter Hay, Franklin County jailer, stated that: (1) the amendments requested by the Department are good changes; (2) are a response to several multimillion dollar lawsuits filed because Kentucky's jails were maintained and operated in an unconstitutional manner; (3) the General Assembly took the lead in correcting the problems in the jails; (4) other states now use Kentucky's jail standards as a model for jail operation and efficiency; (5) these amendments conform to the latest court decisions on jail standards and are supported by the jailer's, county judge's and magistrate's association; and (6) these changes were made to make it as easy on counties to operate as is constitutionally possible.

Cabinet officials agreed to defer the Department's jail standards administrative regulations to permit the Subcommittee and its staff to review relevant court decisions which it would furnish to the Subcommittee.

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 501 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.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:030. Simulcast facilities.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:120. Water supply and distribution. Section 11 of this administrative regulation provided that temperature or pressure balance devices shall be installed on all shower compartments and shower-bath combinations in order to prevent "sudden unanticipated changes in water temperature". Prior to its amendment by the Department, Section 11 had required the installation of temperature and pressure control devices on all installations, except in homes and apartment complexes, in order to: (1) maintain even temperature and pressure; and (2) provide protection against scalding.

Mr. Wilkerson, a registered master plumber and an owner of a plumbing and building supply concern, objected to this administrative regulation because he believed that it: (1) would outlaw future installation of the typical shower or tub faucets currently existing in homes, mobile homes, individual dwellings, housing on farmsteads, and apartments; (2) required a single control shower with a pressure balance, rather than the dual control shower commonly used; and (3) would raise costs by 60% to the consumer. He added that the administrative regulation did not apply to tubs or sinks, and that if required for showers it should be required to prevent scalding from tub faucet water or from sink faucets to protect infants bathed in sinks.

Mr. Wilkerson stated that, while people have been burned because the shower water was too hot, the responsibility for insuring that the shower or tub water is not scalding lies with individuals and parents, not the state. He added that not every danger can be legislated out of existence, and that the reasoning behind this regulation would justify mandating by administrative regulation that electric outlets plug covers be installed because children sometimes stick sharp objects into the outlets, or that a barrier between children and a television set be installed to prevent children from sitting too close to the set.

Chairman Kerr asked Department personnel whether this administrative regulation applied existing faucets as well as new installations. Department personnel stated that it: (1) was limited to new construction; (2) did not apply to farmsteads; (3) did not require the installation of antiscald devices. She added that: (1) Section 11 previously applied to hotels to prevent scalding or cold water shock, or a fall induced by the sudden change in temperature, from a sudden drop in pressure; (2) the Plumbing Committee and the Board of Housing had reviewed the matter and the costs in detail; and (3) the cost would be between $5 and $140, depending on the quality and expense of the material of which the faucet was made, and that the average cost based upon the type usually installed would be around $16.

In response to a question by Representative Allen on the type of device required, Department personnel stated that it: (1) was either a pressure balanced valve, or a temperature control valve; (2)

reduced the flow and maintained a safe temperature when the temperature became too hot, by an adjustment behind the shower head that clamps down and reduces the flow; and (3) would prevent a sudden change when pressure was reduced because of an additional drain on water supply by flushing toilets or turning on other faucets or sources such as a washing machine.

Representative Allen (1) asked whether the decision to install such a device should not be left up to the homeowner, rather than the state, even if it was a good device; and (2) added that consumers could not afford everything. Department personnel stated that the recommendations were: (1) made, considered and approved by the Plumbing Committee and the Board of Housing which are not government agencies and are made up of business people, citizens, and some representatives of Health and Protection; and (2) based on a determination that the value in the protection afforded the public was reasonable and exceeded the cost.

In response to a question by Mr. Wilkerson, Department personnel stated that farmsteads were exempt, even if the water source was a municipal water system. Representatives Allen and Bruce stated that if the water source was a municipal water system, the administrative regulation would apply. Department personnel stated that the plumbing code: (1) did not apply to farmsteads; and (2) was used by water districts to prohibit connection to their system without approval and a permit. In response to a question by Representative Allen, Department personnel stated that whether the code applied to a farmstead depended on the rules of the local water district.

Representative Allen requested Subcommittee staff to research legislation in order to determine whether farmsteads were exempt, because he believed that the exemption had been deleted by legislation enacted during the last session.

In response to questions by Representative Yates on the difference in cost between previously permitted shower heads and those required by this administrative regulation, and whether current inventories could be exhausted before the new requirements went into effect, Department personnel stated that: (1) the Department had been informed that the average cost increase was between $5 and $16; and (2) although the issue of inventories had not been discussed, it appeared that devices could be added to the non conforming shower heads.

Department personnel stated that the administrative regulation could be deferred so that the Housing, Buildings and Construction Board could be informed of Subcommittee objections and concerns.

Senator Smith stated that this administrative regulation resembled the requirement in another administrative regulation, governing the hooking up of the straight piece of lateral line pipe going to a mobile home septic tank, that requires the trench to be left open for inspection, that had no relation to health or safety, or whether the septic tank and lateral line worked, and only resulted in extra fee expense for the homeowner and contractor. He added that, while he had been assured during the last session that this requirement would be deleted, the requirement still exists. Department personnel stated that: (1) there had been discussions over this issue; (2) she believed that some action had been taken; and (3) would check and report back to Senator Smith.

Department personnel confirmed Senator Kafoglis belief that this administrative regulation was intended to prevent the type of injuries that had resulted from scalding and protect public health and safety. Senator Kafoglis asked Department personnel whether statistics existed showing the extent of the safety problem and danger to the public and the number of people who were injured and required medical treatments. Department offered to obtain this information and suggested deferral of this administrative regulation: (1) until the information had been considered by the Subcommittee; and (2) the Department personnel knowledgeable about the problems spoke with the Subcommittee. Senator Kafoglis stated that this information was necessary because: (1) the imposition of increased costs on the public required a compelling reason; and (2) whether the reason was compelling depended upon the: (a) number of and types of injuries; and (b) whether the medical expenses due to injuries far outweighed the cost of installation; and (3) that it appeared that this analysis would have been undertaken prior to imposing the new requirements. In response to a question by Senator Kafoglis for the citation of the statutory authority for this administrative regulation, Department personnel stated that authority was granted by: (1) KRS Chapter 318, authorizing the Department of Housing to establish reasonable standards for the construction of plumbing; and (2) KRS Chapter 198B requiring the Board of Housing to issue administrative regulations dealing with plumbing construction standards to protect public health and safety. Department personnel stated that administrative regulations promulgated under these KRS Chapters are coordinated by the requirement that they be approved both by the Advisory Committee of the Plumbing Code Committee and the Board of Housing.

The Subcommittee approved a motion by Representative Yates that this administrative regulation be deferred in order to provide the Subcommittee with the information requested.

Acting Chairman Bruce requested the Department to send copies of the information to Subcommittee staff.

Senator Smith requested Department personnel to convey to the Board his belief that not all dangers required, or could be solved by, government intervention, and that the exercise of individual caution could prevent the danger the administrative regulation purported to protect against. He added that he did not approve of this administrative regulation.

The Subcommittee adjourned at 1 p.m. until May 3, 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 HEALTH AND WELFARE
Meeting of March 17, 1993

The Interim Joint Committee on Health and Welfare met on Wednesday, March 17, 1993, and submits the following report:

The Committee voted to approve the following LRC referred administrative regulations: 201 KAR 21:095, 902 KAR 10:045, 902 KAR 55:040, and 902 KAR 55:045. There were no objections.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of April 6, 1993

The Interim Joint Committee on Transportation met on Tuesday, April 6, 1993, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A: 602 KAR 40:020 - Application for license to operate vehicles transporting municipal solid waste.

The Committee adjourned at 1:50 p.m.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of April 5, 1993

The Interim Joint Committee on Business Organizations and Professions met on Monday, April 5, 1993, and submits this report:

The Committee determined that 201 KAR 11:350 (Kentucky Real Estate Commission) complies with KRS Chapter 13A and KRS Chapter 324, as amended at the Committee's April 5, 1993, meeting. The "SELLER DISCLOSURE OF PROPERTY CONDITION" form was amended as follows:

(1) After the title of the form, insert" "The information in this form is only for the period the undersigned owned the property beginning (date of purchase) to (date of this form)."

(2) After "PROPERTY CONDITIONS, IMPROVEMENTS & ADDITIONAL INFORMATION: 1. Delete "Has the basement ever leaked?" In lieu thereof, insert "Does the basement leak?"

(3) After "PROPERTY CONDITIONS, IMPROVEMENTS & ADDITIONAL INFORMATION: 2. Delete "Has the roof ever leaked?" In lieu thereof, insert "Does the roof leak?". Delete "Approximate age of the roof: ___Years ___Unknown". In lieu thereof, insert "What is the condition of the roof? Explain."

(4) After "PROPERTY CONDITIONS, IMPROVEMENTS & ADDITIONAL INFORMATION: 6. Delete "Has your sewer service ever been interrupted? ___Yes ___No ___Unknown". In lieu thereof, insert "What is the condition of your sewer service? Explain."

201 KAR 27:012 was deferred at the request of the Athletic Commission until the next Committee meeting.

The Committee adjourned at 11 a.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates K2

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 K16

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 K28

The Subject Index is a general index of regulations published in VOLUME 19 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - K2

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date

VOLUME 18

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

201 KAR 18:040E	3310	4-27-92
Replaced		10-30-92
302 KAR 16:080E	3130	4-7-92
Replaced		8-27-92
804 KAR 9:040E	3313	4-24-92
Replaced		9-14-92

ORDINARY REGULATIONS:

201 KAR 10:050		
Amended	3497	(See VOLUME 19)
201 KAR 10:060		
Amended	3209	10-30-92
201 KAR 18:040		
Amended	3210	(See VOLUME 19)
201 KAR 18:075	3271	
Withdrawn		10-1-92
803 KAR 2:320		
Amended	3529	10-7-92
804 KAR 9:040		
Amended	3536	(See VOLUME 19)

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

1 KAR 6:020E	1048	9-18-92
Replaced	1524	1-4-93
9 KAR 1:010E	2375	3-17-93
9 KAR 1:020E	2375	3-17-93
9 KAR 1:030E	2375	3-17-93
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
Expires		1-29-93
32 KAR 2:020E	1048	10-6-92
Replaced	1524	1-4-93
32 KAR 2:030E	1049	10-6-92
Replaced	1525	1-4-93
32 KAR 2:040E	1050	10-6-92
Replaced	1526	1-4-93
32 KAR 2:050E	1052	10-6-92
Replaced	1527	1-4-93
32 KAR 2:060E	1052	10-6-92
Replaced	1528	1-4-93
32 KAR 2:070E	1053	10-6-92
Replaced	1529	1-4-93
32 KAR 2:080E	1054	10-6-92
Replaced	1529	1-4-93
101 KAR 1:325E	860	8-18-92
Replaced	961	12-9-92
103 KAR 5:150	2376	3-26-93
200 KAR 6:045E	2001	1-26-93
200 KAR 14:011E	362	7-14-92
Replaced	1065	10-22-92
200 KAR 14:081E	363	7-14-92
Replaced	1066	10-22-92
200 KAR 14:091E	364	7-14-92
Replaced	1068	10-22-92
201 KAR 2:105E	862	8-18-92
201 KAR 2:210E	1726	1-5-93
Replaced	1694	2-17-93
201 KAR 10:050E	4	5-18-92
Replaced	1068	10-30-92
201 KAR 18:180E	1727	12-21-92
201 KAR 18:190E	1728	12-21-92
201 KAR 22:135E	1299	11-2-92
Replaced	1402	1-27-93
301 KAR 2:044E	864	8-18-92
Replaced	1074	11-9-92
301 KAR 2:220E	1054	9-22-92
Replaced	1340	11-23-92
401 KAR 49:009E	4	6-8-92
Expired		10-28-92
401 KAR 50:037E	681	7-31-92
Replaced	542	11-9-92
405 KAR 7:001E	682	7-24-92
Replaced	1345	11-23-92
405 KAR 7:091E	686	7-24-92
Replaced	1348	11-23-92
405 KAR 7:092E	689	7-24-92
Replaced	1352	11-23-92
405 KAR 12:020E	697	7-24-92
Replaced	939	11-23-92
415 KAR 1:050E	1299	11-9-92
Replaced	1792	3-12-93
415 KAR 1:060E	1301	11-9-92
Replaced	1793	3-12-93
415 KAR 1:070E	1303	11-9-92
Replaced	1795	3-12-93
415 KAR 1:080E	1306	11-9-92
Replaced	1797	3-12-93
415 KAR 1:090E	1307	11-9-92
Replaced	1799	3-12-93
415 KAR 1:100E	1308	11-9-92
Replaced	1485	3-12-93
415 KAR 1:120E	1309	11-9-92
Replaced	1800	3-12-93
500 KAR 10:001E	1058	9-22-92
Replaced	1365	12-9-92
500 KAR 10:010E	1059	9-22-92
Expired		11-5-92
500 KAR 10:020E	1059	9-22-92
Replaced	1366	12-9-92
Resubmitted	2232	2-18-93
500 KAR 10:030E	1060	9-22-92
Replaced	1366	12-9-92
500 KAR 10:040E	1060	9-22-92
Replaced	1367	12-9-92
501 KAR 1:060E	1729	1-6-93
Expired*		3-15-93
501 KAR 2:020E	1310	11-10-92
Replaced	1745	2-8-93
501 KAR 2:030E	1311	11-10-92
Replaced	1746	2-8-93

ADMINISTRATIVE REGISTER - K3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
501 KAR 2:040E	1311	11-10-92
Replaced	1746	2-8-93
501 KAR 2:050E	1311	11-10-92
Replaced	1490	2-8-93
501 KAR 2:060E	1312	11-10-92
Replaced	1746	2-8-93
501 KAR 6:020E	5	5-22-92
Replaced		8-1-92
Resubmitted	701	7-23-92
Replaced	790	11-9-92
Resubmitted	1518	12-2-92
Replaced	1647	3-12-93
Resubmitted	2001	1-21-93
501 KAR 6:060E	365	6-24-92
Replaced	501	10-8-92
501 KAR 6:090E	2377	3-26-93
501 KAR 6:110E	2378	3-26-93
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
502 KAR 45:045E	2005	2-9-93
502 KAR 45:055E	2005	2-9-93
502 KAR 45:065E	2006	2-9-93
502 KAR 45:075E	2007	2-9-93
502 KAR 45:085E	2007	2-9-93
502 KAR 45:095E	2008	2-9-93
502 KAR 45:105E	2008	2-9-93
502 KAR 45:115E	2008	2-9-93
502 KAR 45:116E	2009	2-9-93
601 KAR 40:020E	366	7-13-92
Replaced	942	11-4-92
603 KAR 3:060E	368	7-8-92
Replaced	944	11-4-92
603 KAR 5:110E	369	7-15-92
Replaced	1367	12-1-92
603 KAR 5:300E	372	7-13-92
Died*		9-10-92
702 KAR 1:001E	1520	12-10-92
Replaced	1418	2-4-93
702 KAR 3:245E	1520	12-10-92
Replaced	1492	3-4-93
704 KAR 3:035E	2009	1-21-93
704 KAR 3:303E	7	6-12-92
Replaced		8-1-92
704 KAR 3:405E	1061	9-22-92
Replaced	1377	12-9-92
704 KAR 3:440E	7	5-22-92
Replaced	397	8-1-92
780 KAR 3:020E	9	6-11-92
Replaced		8-1-92
806 KAR 3:150E	2380	4-15-93
806 KAR 3:180E	2381	4-15-93
810 KAR 1:030E	1730	12-29-92
901 KAR 5:050E	372	7-2-92
Replaced	298	8-28-92
902 KAR 10:021E	372	7-2-92
Replaced	298	8-28-92
902 KAR 10:035E	702	7-24-92
Replaced	1085	11-9-92
902 KAR 10:060E	372	6-30-92
Replaced	299	8-28-92
902 KAR 10:121E	373	6-30-92
Replaced	300	8-28-92
902 KAR 10:130E	373	6-30-92
Replaced	301	8-28-92
902 KAR 20:004E	374	7-10-92
Replaced	1085	11-9-92
902 KAR 20:320E	1313	10-16-92
Replaced	1772	1-27-93
902 KAR 20:330E	1324	10-16-92
Replaced	1624	2-17-93
902 KAR 45:110E	378	6-30-92
Replaced	732	8-28-92
902 KAR 45:120E	379	6-30-92
Replaced	302	8-28-92
902 KAR 100:012E	10	6-4-92
Replaced	303	8-28-92
902 KAR 105:020E	10	6-4-92
Replaced	733	8-28-92
903 KAR 5:270E	379	6-30-92
Replaced	519	10-7-92
903 KAR 5:290E	12	6-4-92
Replaced	306	8-28-92
Resubmitted	2381	3-27-93
904 KAR 2:006E	380	7-10-92
Replaced	520	10-8-92
904 KAR 2:016E	1327	10-16-92
Replaced	1560	12-16-92
904 KAR 2:116E	1334	10-16-92
Replaced	1567	1-4-93
905 KAR 2:100E	703	7-24-92
Replaced	1090	11-9-92
906 KAR 1:110E	12	5-22-92
Replaced	424	8-28-92
907 KAR 1:013E	14	6-4-92
Withdrawn		7-10-92
Resubmitted	385	7-10-92
Replaced	958	11-9-92
Resubmitted	2382	3-31-93
907 KAR 1:016E	2385	3-26-93
907 KAR 1:025E	706	7-24-92
Replaced	827	11-9-92
Resubmitted	1731	1-13-93
907 KAR 1:028E	2011	2-2-93
907 KAR 1:029E	2012	2-2-93
907 KAR 1:031E	2012	1-21-93
907 KAR 1:061E	2014	2-2-93
907 KAR 1:505E	2386	3-25-93
907 KAR 1:512E	2387	3-26-93
907 KAR 1:575E	1522	12-8-92
Replaced	1505	1-27-93

ORDINARY REGULATIONS:

1 KAR 3:005		
Repealed	1012	12-9-92
1 KAR 3:006	1012	12-9-92
1 KAR 6:010		
Repealed	1048	9-18-92
1 KAR 6:020	1231	
As Amended	1524	1-4-93
9 KAR 1:010	2348	
9 KAR 1:020	2348	
9 KAR 1:030	2349	
11 KAR 3:001	1668	
As Amended	2017	3-4-93
11 KAR 3:005	1012	12-9-92
11 KAR 3:015	1671	
As Amended	2019	3-4-93
11 KAR 3:025	1677	3-4-93
11 KAR 3:035	1679	3-4-93
11 KAR 3:045	1681	3-4-93
11 KAR 3:055	1686	3-4-93
11 KAR 3:060		
Repealed	1688	3-4-93
11 KAR 3:061	1688	3-4-93
11 KAR 3:100		
Amended	414	8-20-92
Amended	2475	
11 KAR 4:010		
Repealed	921	12-9-92
11 KAR 4:015	1014	12-9-92

ADMINISTRATIVE REGISTER - K4

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Regulation Number	19 Ky.R Page No.	Effective Date
11 KAR 4:020		
Amended	428	
Amended	921	12-9-92
11 KAR 4:060	531	10-1-92
11 KAR 5:001		
As Amended	388	8-1-92
Amended	1628	3-4-93
11 KAR 5:130		
As Amended	389	8-1-92
Amended	1629	
As Amended	2233	4/7/93
11 KAR 5:140		
Amended	1630	3-4-93
11 KAR 5:145		
Amended	1631	
As Amended	2233	4-7-93
11 KAR 6:010		
Amended	2478	
11 KAR 8:030		
Amended	2480	
11 KAR 11:020		
Repealed	389	8-1-92
11 KAR 12:010		
Amended	433	10-1-92
11 KAR 12:020		
Amended	435	10-1-92
11 KAR 12:030		
Amended	436	10-1-92
11 KAR 12:040		
Amended	437	10-1-92
11 KAR 12:050		
Amended	438	10-1-92
11 KAR 12:060		
Amended	439	10-1-92
11 KAR 12:070		
Amended	440	10-1-92
Amended	2482	
11 KAR 12:080		
Repealed	532	10-1-91
11 KAR 12:081	532	10-1-92
11 KAR 12:090		
Amended	442	10-1-92
12 KAR 1:005		
Amended	1812	
12 KAR 1:007	1928	
Died*		3-10-93
12 KAR 1:010		
Amended	1813	
12 KAR 1:025		
Amended	1813	
12 KAR 1:055		
Amended	1814	
12 KAR 1:060		
Amended	1815	
12 KAR 1:065		
Amended	1816	
12 KAR 1:075		
Amended	1817	
12 KAR 1:080		
Amended	1818	
12 KAR 1:085		
Amended	1819	
12 KAR 1:090		
Amended	1820	
12 KAR 1:095		
Amended	1822	
12 KAR 1:100		
Amended	1823	
12 KAR 1:105		
Amended	1824	
13 KAR 2:060	1689	
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14 KAR 1:010		
Amended	2075	
32 KAR 1:020		
Recodified from 801 KAR 1:005		8-5-92
32 KAR 1:030		
Recodified from 801 KAR 1:010		8-5-92
32 KAR 1:040		
Recodified from 801 KAR 1:020		8-5-92
32 KAR 1:050		
Recodified from 801 KAR 1:040		8-5-92
32 KAR 1:060		
Recodified from 801 KAR 1:070		8-5-92
32 KAR 1:070		
Recodified from 801 KAR 1:080		8-5-92
32 KAR 1:080		
Recodified from 801 KAR 1:090		8-5-92
32 KAR 1:090		
Recodified from 801 KAR 1:110		8-5-92
32 KAR 2:010		
Recodified from 801 KAR 2:010		8-5-92
Repealed	1049	10-5-92
32 KAR 2:020	1232	
As Amended	1524	1-4-93
32 KAR 2:030	1233	
As Amended	1525	1-4-93
32 KAR 2:040	1234	
As Amended	1526	1-4-93
32 KAR 2:050	1236	
As Amended	1527	1-4-93
Amended	2484	
32 KAR 2:060	1237	
As Amended	1528	1-4-93
Amended	2485	
32 KAR 2:070	1238	
As Amended	1529	1-4-93
32 KAR 2:080	1239	
As Amended	1529	1-4-93
32 KAR 2:090	1929	
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32 KAR 2:100	1930	
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32 KAR 2:110	1931	4-7-93
32 KAR 2:120	2519	
32 KAR 2:130	2519	
32 KAR 2:140	2520	
32 KAR 2:150	2521	
40 KAR 2:001	532	
As Amended	1063	11-9-92
40 KAR 2:030	533	
Withdrawn		10-1-92
40 KAR 2:040	534	
As Amended	1063	11-9-92
40 KAR 2:050	535	
As Amended	1064	11-9-92
40 KAR 2:060	537	
As Amended	1065	11-9-92
45 KAR 1:060	1015	
As Amended	1337	11-12-92
101 KAR 1:325		
Amended	961	12-9-92
101 KAR 1:335		
Amended	1633	
As Amended	2234	4-7-93
101 KAR 1:365		
Amended	80	
As Amended	866	10-8-92
101 KAR 1:375		
Amended	81	
As Amended	867	10-8-92
101 KAR 2:046		
As Amended	389	8-1-92

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101 KAR 2:066		
Amended	1634	3-10-93
102 KAR 1:185		
Amended	1097	
As Amended	1529	1-4-93
103 KAR 5:150	2350	
104 KAR 1:010		
Amended	2077	
As Amended	2388	
104 KAR 1:020		
Amended	2079	
As Amended	2389	
104 KAR 1:030		
Amended	2082	
As Amended	2392	
104 KAR 1:040		
Amended	2083	
As Amended	2393	
104 KAR 1:050		
Amended	2084	
As Amended	2393	
104 KAR 1:060		
Amended	2085	
As Amended	2394	
104 KAR 1:070		
Amended	2087	
As Amended	2395	
104 KAR 1:080	2157	
As Amended	2396	
104 KAR 1:090	2158	
As Amended	2396	
104 KAR 1:100	2158	
As Amended	2397	
105 KAR 1:010		
Amended	2288	
105 KAR 1:020		
Amended	962	12-9-92
105 KAR 1:040		
Amended	1398	3-10-93
105 KAR 1:120		
Amended	1400	
Withdrawn		12-28-92
Amended	2087	
As Amended	2399	
105 KAR 1:150		
Amended	965	12-9-92
105 KAR 1:160		
Amended	966	12-9-92
105 KAR 1:170		
Amended	2290	
105 KAR 1:180		
Amended	967	
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105 KAR 1:210		
Amended	968	
As Amended	1338	12-9-92
105 KAR 1:215		
Amended	969	12-9-92
105 KAR 1:250	1016	
As Amended	1339	12-9-92
105 KAR 1:260	1017	
As Amended	1339	12-9-92
105 KAR 1:270	2352	
106 KAR 1:070		
Repealed	2065	4-7-93
106 KAR 1:075	1691	
Amended	2065	4-7-93
108 KAR 1:010		
Amended	787	
Amended	1094	
As Amended	1531	1-4-93

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200 KAR 2:006		
Amended	971	
As Amended	1737	1-13-93
200 KAR 6:045	2160	
200 KAR 14:011	537	
As Amended	1065	10-22-92
200 KAR 14:081	538	
As Amended	1066	10-22-92
200 KAR 14:091	540	
As Amended	1068	10-22-92
200 KAR 17:060	2522	
200 KAR 19:010	2161	
200 KAR 19:020	2162	
201 KAR 1:062		
Repealed	2025	2-19-93
201 KAR 1:063	1692	
As Amended	2025	2-19-93
201 KAR 1:130		
Amended	1636	
As Amended	2026	2-19-93
201 KAR 2:010		
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