ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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Administrative Regulation Review Subcommittee, July Agenda 1
Regulation Review Procedure 3

Emergency Regulations Now In Effect:
Agriculture 4
Transportation 7
Insurance 8
Human Resources 9
As Amended:
Higher Education Assistance Authority 44
Agricultural Experiment Station 45
Registry of Election Finance 50
Revenue Cabinet 52
Kentucky Infrastructure Authority 53
Workers' Compensation Funding Commission 55
Board for Professional Engineers & Land Surveyors 56
Kentucky Athletic Commission 60
Real Estate Appraisers Board 60
Fish and Wildlife Resources 62
Economic Development Cabinet 69
NREPC - Waste Management 72
Justice 72
Education 75
Workforce Develoment 79
Insurance 79
Kentucky Racing Commission 81
Housing, Buildings and Construction 85
Human Resources 87
Amended After Hearing:
Higher Education Assistance Authority 96
Education 98
Human Resources 121
Proposed Amendments Received Through Noon, June 15, 1993:
Local Government 131
NREPC - Surface Mining 132
Justice - Corrections 139
Transportation 145
Education 150
Workforce Development 154
Human Resources 155
Proposed Regulations Received Through Noon, June 15, 1993:
Auditor of Public Accounts 163
Board of Medical Licensure 163
NREPC - Air Quality 164
Transportation 227
Education 241
Workforce Development 244
Insurance 247
Human Resources 249
June Minutes of the Administrative Regulation Review Subcommittee 262
Other Committee Reports 271

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates A2
KRS Index A7
Subject Index A9

MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on July 2, 1993 at 8 a.m.. See **tentative** agenda on pages 1-2 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 - July 2, 1993 @ 8 A.M.
Room 131, Capitol Annex

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Kentucky Loan Program

11 KAR 3:100. Administrative wage garnishment. (Written Comments Received in May)

DEPARTMENT OF STATE
Registry of Election Finance

Practice and Procedure

32 KAR 2:150. Three judge panel; appointment; procedure. (Deferred from June)

GENERAL GOVERNMENT CABINET

Board of Accountancy

201 KAR 1:045. Examination subjects, grading and reexamination.
201 KAR 1:130. Examination application procedure.

Board of Nursing

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization.
201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.
201 KAR 20:161. Investigation and disposition of complaints. (Repeals 201 KAR 20:115)
201 KAR 20:162. Procedure for disciplinary hearings pursuant to KRS 314.091.
201 KAR 20:215. Contact hours, record keeping and reporting requirements for renewal of licensure.
201 KAR 20:235. The prevention of transmission of HIV and HBV by nurses.
201 KAR 20:240. Fees for applications and for services.
201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.
201 KAR 20:370. Applications for licensure and registration.

TOURISM CABINET
Department of Fish and Wildlife Resources

Game

301 KAR 2:111. Deer and turkey hunting on special areas.

ECONOMIC DEVELOPMENT CABINET
Department of Agriculture

Livestock Sanitation

302 KAR 20:040E. Entry into Kentucky. (Expires 9/23/93)
302 KAR 20:054 & E. Fee basis schedule.
302 KAR 20:055E. Brucellosis vaccination, testing and branding requirements. (Expires 9/23/93)
302 KAR 20:065E. Sale and exhibition of livestock in Kentucky. (Expires 9/23/93)
302 KAR 20:070E. Stockyards. (Expires 9/23/93)

JUSTICE CABINET

Telecommunicators

500 KAR 4:060. Basic training: graduation requirements; records.

Department of Corrections

Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:050. Luther Luckett Correctional Complex.
501 KAR 6:080. Department of Corrections Manuals.
501 KAR 6:140. Bell County Forestry Camp.

Department of Training

Law Enforcement Foundation Program Fund

503 KAR 5:130. Base salaries and undue hardship.

TRANSPORTATION CABINET
Department of Highways

Traffic

603 KAR 5:230. Bridge weight limits on the extended weight coal or coal by-products haul road system.

Division of Planning

603 KAR 9:010 & E. Railroad crossing closure procedure.

EDUCATION, ARTS AND HUMANITIES CABINET

Department of Education

Office of Learning Programs Development

704 KAR 7:120. Home or hospital instruction. (Amended After Hearing)

Office of Education for Exceptional Children: Exceptional and Handicapped Program

707 KAR 1:061. Repeal of existing regulations. (Repeals 707 KAR 1:041, 1:051, 1:052, 1:053, 1:054, 1:055, 1:056, 1:057, 1:058, 1:059, 1:059, 1:060, 1:070, 1:080.) (Amended After Hearing)

707 KAR 1:160. Free appropriate public education. (Amended After Hearing)

707 KAR 1:170. Identification of children and youth with disabilities. (Amended After Hearing)

707 KAR 1:180. Due process procedures. (Amended After Hearing)

707 KAR 1:190. Evaluation. (Amended After Hearing)

707 KAR 1:200. Eligibility of children and youth with disabilities. (Amended After Hearing)

707 KAR 1:210. Individual education programs. (Amended After Hearing)

707 KAR 1:220. Placement in the least restrictive environment. (Amended After Hearing)

707 KAR 1:230. Delivery of services. (Amended After Hearing)

707 KAR 1:240. Confidentiality of personally identifiable information. (Not Amended After Hearing)

707 KAR 1:250. Services in other programs. (Amended After Hearing)

707 KAR 1:260. Comprehensive system of personnel development. (Not Amended After Hearing)

LABOR CABINET

Occupational Safety and Health

803 KAR 2:307. Adoption of 29 CFR Part 1910.101-.120.

803 KAR 2:310. Adoption of 29 CFR Part 1910 151-.153.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Mines and Minerals

Division of Mining

805 KAR 5:010. Fees for licensure to mine.

Miner Training, Education and Certification

805 KAR 7:030. Annual retraining.

Department of Housing, Buildings and Construction

Plumbing

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

CABINET FOR HUMAN RESOURCES

Office of Administrative Services

Vital Statistics

901 KAR 5:032. Repeal of 901 KAR 5:031.

Department for Health Services

Local Health Departments

902 KAR 8:040 & E. Definition of terms applicable for the personnel program for local health departments.

902 KAR 8:050 & E. Local health personnel advisory council for local health departments and administrative support of the council.

902 KAR 8:060 & E. Classification and compensation plans for local health departments of Kentucky.

902 KAR 8:070 & E. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

902 KAR 8:080 & E. Initial appointment, probationary period, lay-offs, performance evaluation and the resignation of employees of local health departments.

902 KAR 8:090 & E. Promotion, transfer, and demotion of local health department employees.

902 KAR 8:100 & E. Disciplinary procedures applicable for local health department employees.

902 KAR 8:110 & E. Disciplinary appeal process applicable for local health department employees.

902 KAR 8:120 & E. Leave provisions applicable to employees of local health departments.

902 KAR 8:130 & E. Participation of local health department employees in political activities.

902 KAR 8:140 & E. Appointment of a health officer or a Health Department Director of a local health department.

Health Services and Facilities

902 KAR 20:004 & E. Certificate of need process.

902 KAR 20:016. Hospitals operation and services. (Amended After Hearing)

Department for Social Insurance

Food Stamp Program

904 KAR 3:010. Definitions.

Department for Medicaid Services

Medicaid Services

907 KAR 1:013 & E. Payments for hospital inpatient services. (Not Amended After Hearing)

Department for Mental Health and Mental Retardation Services

Mental Health

908 KAR 2:070. Standards for rape crisis centers.

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
302 KAR 15:010E

This emergency administrative regulation provides the Kentucky Department of Agriculture the ability to make additional grants to county agricultural fairs for harness horse racing at the county fairs. Over the last few years, harness horse racing at county fairs has come under increasing strain and it is necessary that the regulation be changed to provide authority to make additional grants if available. The grants have been previously approved by the Budget Review Subcommittee on General Government, Finance and Public Protection of the Interim Joint Committee on Appropriations and Revenue. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
ED LOGSDON, Commissioner

DEPARTMENT OF AGRICULTURE
Division of Shows and Fairs

302 KAR 15:010E. Administration; state aid to local fairs.

RELATES TO: KRS 247.220
STATUTORY AUTHORITY: KRS 247.220
EFFECTIVE: May 18, 1993
EXPIRES: October 29, 1993
NECESSITY AND FUNCTION: Provides rules and regulations by which the state aid to local fairs program must be administered. It explains to the Department of Agriculture, Division of Shows and Fairs, and to the local fairs their responsibilities in the program.

Section 1. General Administration. (1) The Director of the Division of Shows and Fairs in the Department of Agriculture shall only make premium allocations to the authorized agent of an incorporated local fair board that conducts a qualified local agricultural fair in compliance with KRS 247.220.

(2) Local fair boards applying for state funds shall see that a reasonable effort is made by local fair officials to develop a program that will supplement agricultural educational and promotional activities that coincide with the objectives of agencies officially charged with these responsibilities.

(3) Local fair boards seeking state assistance shall plan and conduct a qualified local agricultural fair with educational exhibits running for at least three (3) consecutive days (thirty-six (36) hours of exhibition). All fair events must be held on consecutive days with the following exceptions:

(a) Fairs may be closed on Sundays, if the local board desires; and

(b) Fairs may conduct certain events, such as harness horse racing, on separate dates providing the local board files a request to do so with the Division of Shows and Fairs and that request is approved by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture with a recommendation by the Kentucky Fair Council that the Commissioner of Agriculture approve or reject the local board's request.

(4) Local boards shall establish premiums related to the economic importance of the commodity in the area, the relative value of the exhibit and the difficulty in preparing for and showing the entry. Local boards shall establish classes based upon the Department of Agriculture's "Uniform Classes" booklet since no divisions other than these set up by this booklet will qualify for aid, but within each division, deviation will be accepted provided the additional classes are based on the participation in that area.

(5) State funds shall be limited to crops, foods, domestic livestock, poultry, 4-H, FFA and FHA projects, harness horse racing and other horse events, provided they have a good potential for profitable expansion or the improvement of the agriculture economy of the area.

(6) Ribbon colors used at each local fair shall coincide with those adopted by the International Association of Fairs.

(7) Fair boards seeking state funds shall provide adequate health facilities for exhibitors tending exhibits and for fair attendants.

(8) Fair events held at a location other than the fairgrounds may qualify for aid if such an event is held during corresponding consecutive dates with the fair and publicized in the fair's catalog as being a fair event.

Section 2. Records. (1) Requests for state assistance shall be made annually on appropriate forms and mailed to the Division of Shows and Fairs by March 1. The Commissioner of Agriculture shall have the authority to allow a fair to enter the program after the application deadline has passed.

(2) An appropriate information form concerning the fair's beef, dairy, and sheep shows shall be mailed to the Division of Shows and Fairs by May 1.

(3) Fairs shall submit a rough copy of their catalog to the Division of Shows and Fairs at least forty-five (45) days before their fair. This shall include the same information required in the printed catalog, excluding advertisements. A printed copy of the fair's catalog shall be submitted no later than thirty (30) days before the start of the fair. No payment can be made before the printed catalog is received by the Division of Shows and Fairs.

(4) A complete financial statement for events previously requesting state funds shall be submitted to the Department of Agriculture prior to the second fair payment, this payment including the second agricultural premium payment, the second harness racing payment and the payment for horse events. This annual financial statement shall cover all crops, foods, domestic livestock, poultry, harness horse racing, other horse events and other agricultural classes that may qualify for aid. It shall be complete and prepared in detail showing receipts and disbursements as well as number of exhibitors and premiums awarded by fair departments. This certified, notarized statement shall be presented to the Director of the Division of Shows and Fairs within forty-five (45) days following the event and no statement will be accepted for payment after December 1.

Section 3. Entries. (1) Fairs qualifying for state funds shall provide for adult and youth divisions. Youth exhibits shall include 4-H, FFA, FHA and may include other official groups recognized by the extension service or the Office of Secondary Vocational Education. All projects approved by these official groups may be approved for state funds. Fair boards may restrict youth participation to a particular district, county or trade area.

(2) All exhibitors, adult and youth, shall have equal opportunity to enter open classes.

(3) Local fair boards receiving state money shall see that exhibit eligible in more than one (1) class and/or section are exhibited onl in the class and/or section for which it best qualifies. Under no circumstances may an exhibitor show the same kind of animal or the

same entry in both FFA and 4-H classes or in classes for other organized junior organizations.

(4) No more than two (2) exhibits shall be made from a household in any one (1) class with the exception of official 4-H or FFA projects and where purebred animals are registered to other members of the household.

(5) All crop, domestic livestock and horse entries receiving state premium money shall conform to official show classifications adopted by the state's Fair Council, and comply with the State Board of Agriculture and the Department of Agriculture regulations. The age classification of all domestic livestock shall be listed in the official fair catalog and all classes shall conform to the standards recommended by the various breed associations. Dairy cattle classes shall conform to the standards recommended by the Kentucky Purebred Dairy Cattle Association. English horse classes shall comply with regulations recommended by the American Horse Show Association. A western bred show shall comply with the regulations set by that specific breed and open western horse classes shall comply with the regulations set by the American Quarter Horse Show Association. Classes with less than three (3) entries each may be combined for show purposes.

(6) All domestic livestock, poultry, and horse entries shall meet the specifications of the health regulations of the State Board of Agriculture relating to the exhibition of livestock in Kentucky.

Section 4. Catalog. (1) All qualified fairs shall have an official fair catalog. A rough copy of the catalog including premium lists and classes, excluding advertisements, shall be submitted to be approved by the Division of Shows and Fairs at least forty-five (45) days prior to the opening of the fair. The finished catalog shall be submitted to the Director of the Department of Agriculture's Division of Shows and Fairs no later than thirty (30) days before the fair is held.

(2) Classes advertised in the catalog shall be reviewed annually by the local fair board to make certain that competitive events are being held and that premiums offered are not out of balance with entries.

(3) The official fair catalog shall contain the following information:

(a) The fair is "planned and conducted according to the Department of Agriculture regulations for the use of state funds."

(b) A list of fair officials and their assigned responsibilities with the following organizations being represented on the agriculture advisory board:

1. Vocational Agriculture.
2. Extension Service.
3. Farm Bureau.
4. Local Livestock Association (if one exists).
5. Local Horsemen's Association (if one exists).

(c) A schedule of events planned as a part of the fair.

(d) Local fair rules and regulations including a statement to the effect that "open classes are open to all exhibitors unless otherwise specified."

(e) General information and regulations by fair departments showing classes and premium lists.

(f) Health regulations by types of livestock to be exhibited.

(g) A rule to the effect that "entries made in 4-H, FFA and FHA classes must have been produced in conjunction with an approved project sponsored by these organizations."

(4) Catalogs shall be mailed and distributed by the local fair board no later than thirty (30) days prior to the opening of the fair.

Section 5. Judges. (1) To assist with the educational objectives of each event, judges shall be encouraged to present reasons for their evaluations and decisions.

(2) No person shall be an exhibitor or act as an agent in any division or department for which he serves as a judge.

Section 6. State Allocation. (1) The Department of Agriculture's agricultural premium money shall be allocated to all approved local fairs on the basis of total money offered for approved classes in the catalog and total money spent in approved classes taken from the fair's financial statement available as indicated by fair records including catalogs. In no instance shall the total agricultural premium payment for one (1) or more fairs held annually in a single county exceed $4,000. In addition, state money for each class shall not exceed fifty (50) percent of the total premiums awarded. The first agricultural premium payment to each fair will be made after the printed catalog is received and will be up to one-fourth (1/4) of the amount of money offered in approved classes by the local fair up to a maximum of $2,000. The second agricultural premium payment will be made after the fair's financial statement is received provided all remaining requirements have been met and the necessary records submitted, and will be based on the amount of money paid for premiums and awards in approved agricultural classes up to a maximum of $4,000 less the amount of the first agricultural premium payment. The combination of county fairs or community fairs of a number of counties shall not be approved to justify a larger state premium payment.

(2) An additional $1,500 grant may be made to a qualified local agricultural fair to be used for horse events' premiums and awards. This grant is on an equal matching fund basis and is based completely on the amount of money paid in premiums and awards for horse events' classes. The payment of this grant will come after the financial statement of the fair is received by the Department of Agriculture and will be included in the fair's second fair payment. The qualified fair must submit with its financial statement, records of premiums paid, number of exhibitors, and number of entries for these horse events.

(3) The Department of Agriculture shall make available to a qualified agriculture fair, an additional $5,000 on an equal matching basis for harness horse racing, with a maximum of $750 per race being matched by the department. To qualify, a fair must meet the regulations and specifications set up by the United States Trotters Association, Kentucky Harness Racing Association and the Department of Agriculture. Harness racing payments will also be disbursed in two (2) payments, the first being one-fourth (1/4) the amount of purses offered in the printed catalog, up to a maximum of $2,500. This payment shall be combined with the fair's first agricultural payment. The second harness racing payment will be based on the amount of money spent in harness racing purses, up to a maximum of $5,000 less the first harness racing payment, and will be included in the second fair payment, providing the fair has included sufficient information on their financial statement in regard to the harness racing results.

(4) The Department of Agriculture may make available to qualified local agricultural fairs for harness horse racing additional grants, on an as needed basis, to continue its efforts to promote harness racing at local fairs. The payment of any grant will come after the financial statements of the fair is reviewed by the department.

(5) When the Department of Agriculture provides the total cost of premiums for a carcass class, a class for performance tested beef animals, or a dairy production class, all classes, rules, and facilities for the respective contest must be approved by the department. Carcass evaluations for meat animals shall be conducted in accordance with standards recommended by the Reciprocal Meats Conference and approved by the Meats Section of the University of Kentucky. Carcass contests financed by state funds shall be conducted in adequate facilities and they should permit spectators to view the carcasses and receive the full educational opportunity. Contest rules for local fairs shall specify that purebred animals and grades will show together. Carcass contests or production or performance classes that will make the greatest contribution to the agriculture of an area and that have the necessary facilities available for their effective operation shall be chosen by fair officials.

(6) [~~(5)~~] The director of the department's show and fair program

shall provide from the appropriation for county fairs an attractive trophy that will be rotated and engraved and presented annually to the local fair that had made the most progress in twelve (12) months. In addition, appropriate engraved plaques shall be presented to the first, second, and third placed fairs making the most progress in the twelve (12) months period and also for the most outstanding new fair in the program for that year. The presentation shall be made by the Department of Agriculture's Fair Council based on records submitted to the department and substantiated by other evidence.

Section 7. Building Program. (1) A qualified local agricultural fair can make application for an additional $3,000 grant of state funds to be used for the establishment of new buildings and facilities or for improvement to existing facilities. Applications for the building program are due in the Division of Shows and Fairs' office no later than June 1 of the year that the work is to be completed, and it must be preceded by a request for state aid application. Such grants shall be on an equal matching basis with the local fair board matching the amount of the state grant. The application form Request for State Aid for the Building Program is incorporated by reference. The form is effective October 12, 1990, and may be obtained at the Division of Shows and Fairs, A-3 Suburban Park, Frankfort, Kentucky 40601, during regular working hours (from 8 a.m. to 4:30 p.m.). In no event shall the payment for facilities result in a decrease in the approved agricultural classes or premiums being offered in the fair catalog.

(2) The buildings and facilities must be used primarily in conjunction with the qualified local agricultural fair and must either be constructed on land owned by the local fair board or on land that the fair group holds a renewable lease.

(a) Some suggested items that may qualify are:

1. The purchase of land for a fairground or the purchase of land adjoining the original grounds.
2. The construction of new buildings.
3. Repair of any existing facilities on the fairgrounds.
4. Grandstands or bleachers used to seat people during the fair.
5. Grading and improvement work done to an existing track or show ring.
6. Loading chutes, wash racks or tie-outs for livestock.

(b) Other items not listed above may qualify for state assistance provided the local fair provides evidence to the Department of Agriculture that the item meets the minimum requirements and is justifiable.

(3) Applying for state assistance. Application for state assistance must be made in writing by the qualified local agricultural fair to the Division of Shows and Fairs, Department of Agriculture, by June 1 of the year that the work is to be completed. The application should include a description of the proposed buildings or improvements to be made, use to be made of these improvements, itemized list of approximate cost, and the date to be completed. Application forms will be available from the Department of Agriculture, Division of Shows and Fairs, and will be distributed after fair program applications are received or upon request.

(4) Financial report of building program. Upon acceptance of qualified local fair's request for assistance by the Department of Agriculture, the local fair will be supplied a financial report form. The financial report should contain a description of the buildings or improvements and an itemized cost of the same. This notarized report shall be presented to the Division of Shows and Fairs within forty-five (45) days following the completion of the building or repair work. No report will be accepted for payment after December 1.

(5) When building program payments will be made. Building program payments will be disbursed in two (2) payments, with the first payment representing one-fourth (1/4) of the total amount submitted on the fair's building report up to a maximum of $1,500. The second building program payments will be made after all financial statements and building reports have been received in the office of the Division of Shows and Fairs and the total amount required for all grants is known. At this point, the second building payment amount shall be adjusted on an equal basis to bring the total grants in line with the funds available in the Aid to Fairs Program budget.

Section 8. Effect of Overspending of Fair Program Budget. In the event that the local agricultural fair program payments exceed the amount of money budgeted for the total fair program, reductions will be made in payments as recommended by the fair council and as determined by the Commissioner of Agriculture.

ED LOGSDON, Commissioner
APPROVED BY AGENCY: May 4, 1993
FILED WITH LRC: May 18, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this emergency administrative regulation will be held on July 21, 1993 at 1 p.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written requests for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Donna Greenwell Dutton, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Agency contact person: Wendell Bruce

(1) Type and number of entities affected: All county fairs with harness horse racing.

(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: Provides the department the ability to make additional grants to county agricultural fairs for harness horse racing.

(a) Direct and indirect costs or savings: N/A

1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation provides necessary funds for harness horse racing at county fairs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative method because harness horse racing at county fairs is under severe financial strain.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 302 KAR 15:010

(a) Necessity of proposed regulation if in conflict: This amendment eliminates any conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.

(6) Any additional information or comments: N/A

TIERING: Is tiering applied? No. This administrative regulation treats all county fairs with harness horse racing the same.

STATEMENT OF EMERGENCY
603 KAR 9:010E

This emergency administrative regulation establishes the procedures and basic criteria the Transportation Cabinet is to follow in preparing and evaluating railway/highway grade crossings for possible closure. This administrative regulation needs to be adopted on an emergency basis because KRS 177.120 requires the Transportation Cabinet by July 1, 1993 to have composed a list of grade crossings proposed to be vacated. Because of unavoidable delays in promulgating the administrative regulation, there is insufficient time available to adopt only the ordinary administrative regulation and have it effective prior to July 1, 1993. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the administrative Regulations Compiler on May 13, 1993.

BRERETON C. JONES, Governor
DON C. KELLY, Secretary

TRANSPORTATION CABINET
Department of Highways
Division of Planning

603 KAR 9:010E. Railroad crossing closure procedure.

RELATES TO: KRS 177.120-177.130
STATUTORY AUTHORITY: KRS 177.120
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 177.120 requires the Transportation Cabinet to promulgate administrative regulations that contain standards governing the establishment, vacation, relocation, and separation of grades at public railway/highway grade crossings. This administrative regulation sets forth procedures the Transportation Cabinet shall follow regarding the production of a list of railroad crossings which shall be considered for closure, the evaluation of the candidate list with respect to possible closure, and the ultimate decision to recommend closure or other appropriate changes to highway facilities crossing railroad rights-of-way. KRS 177.120 considers that public safety will be enhanced by the closure of redundant and inherently dangerous crossings.

Section 1. Candidate Lists. (1) The Transportation Cabinet shall compose a list of candidate railroad crossings for possible closure drawn from the following sources:

(a) Responses to a letter sent to each county or local government in the Commonwealth through which railroad rights-of-way pass requesting a list of railroad crossings suggested for closure;

(b) Responses to a letter sent to each railroad company operating in the Commonwealth requesting a list of railroad crossings suggested for closure;

(c) Recommendations from other public or private agencies or individuals; and

(d) Railroad crossings which the Transportation Cabinet considers candidates for closure.

(2) The Transportation Cabinet may consider any railroad crossing as a candidate for closure when:

(a) An alternate railroad crossing is available within one-quarter (1/4) track mile in urban areas and the railroad crossing has a current average daily traffic count of 500 vehicles or less;

(b) An alternate railroad crossing is available within one (1) track mile in rural areas and the railroad crossing has a current average daily traffic count of 150 vehicles or less; or

(c) The railroad crossing has sight distance obstructions or other layout characteristics which create unsafe conditions and closure of the railroad crossing is an economically preferable alternative to correcting the deficiencies at the site.

Section 2. Evaluation. (1) The Transportation Cabinet's recommendation to retain or close a candidate railroad crossing shall include one (1) or more of the following factors:

(a) Highway traffic flow through the railroad crossing;

(b) Highway operating speeds through the railroad crossing;

(c) Train traffic through the railroad crossing;

(d) Train speed through the railroad crossing;

(e) Character, function and type of highway traffic through the railroad crossing;

(f) The necessity of the crossing for provision of emergency services;

(g) Accident history at the railroad crossing for the past five (5) years;

(h) Railroad crossing geometry including sight distance, acute crossing angle, high profile, etc.;

(i) Type of warning device currently in place at the railroad crossing;

(j) Condition of alternate railroad crossing surface;

(k) Condition of alternate railroad crossing;

(l) Distance and time to alternate railroad crossing;

(m) Character of adjacent road network;

(n) Reasonable access to public and private lands;

(o) Use of the railroad crossing by pedestrians and bicycles;

(p) Frequency of roadway blockage by trains;

(q) Community impacts of train whistle;

(r) Economic importance of the railroad crossing; or

(s) Development projections in the vicinity of the railroad crossing.

(2)(a) The Transportation Cabinet may consider a number of railroad crossings as a group in evaluating the merits of closing a given railroad crossing. If many railroad crossings of a rail line exist close together, the cabinet may recommend that one (1) or more of the railroad crossings be closed, subject to other evaluation criteria.

(b) The Transportation Cabinet may perform or recommend the performance of a traffic study of the road network in the vicinity of a railroad crossing being considered for closure to analyze the effect of the closure on users of the railroad crossing and on local traffic flow.

(c) The Transportation Cabinet may evaluate a railroad crossing in terms of its economic costs and benefits, considering:

1. The railroad crossing's effects on highway and rail operations safety;

2. Changes in highway capital and maintenance costs due to closure;

3. Effects on local business operations and property values, either positive or negative;

4. Effects on rail and highway vehicle operating costs due to closure; or

5. Any other effect which may have economic impact.

Section 3. Data Verification. If the evaluation performed pursuant to Section 2 of this administrative regulation indicates that a railroad crossing is a candidate for closure, the Transportation Cabinet shall verify elements of its information file which are critical to accurate evaluation of the particular railroad crossing. This verification shall, as available, consist of the following:

(1) Collection of updated information from local officials;

(2) Collection of updated information from officials of the affected railroad company; and

(3) Field data collection activities such as updated traffic counts at the railroad crossing.

Section 4. Public Input. (1) If based on the evaluation results of Sections 2 and 3 of this administrative regulation the Transportation Cabinet reaches a preliminary decision to recommend closure of a railroad crossing, the Transportation Cabinet may conduct public information meetings regarding the proposed railroad crossing closure in the region affected by the proposed closure.

(2) If a hearing is requested as specified in KRS 177.120(3), the

Transportation Cabinet shall hold a contested case hearing in accordance with the hearing process specified in 601 KAR 1:030, except that the transcript shall be paid for by the Transportation Cabinet and the Report and Recommended Order shall be presented to the Transportation Secretary.

(3) The burden of proof for retention of the railroad crossing shall be the responsibility of the individuals, organizations, or agencies that contested the closure decision.

(4) The Transportation Cabinet Secretary's decision following the public hearing shall be based on the evaluation performed and information obtained in Sections 2 and 3 of this administrative regulation, subject to new information acquired through the public information and hearing process.

Section 5. Official Order. If the Transportation Cabinet's final decision is to close the candidate railroad crossing, the secretary shall issue an official order to that effect.

Section 6. Local Closures. The Transportation Cabinet's railroad crossing closure program, as mandated by KRS 177.120, shall not preclude local officials and railroad companies from pursuing railroad crossing closure agreements independent of the cabinet's program.

J. M. YOWELL, State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: May 3, 1993
FILED WITH LRC: May 19, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
806 KAR 2:120E

This emergency administrative regulation requires an examiner to prepare and submit to the Department of Insurance an examination report no later than sixty (60) days following the completion of the examination. The Kentucky Department of Insurance will be undergoing review for accreditation by the National Association of Insurance Commissioners ("NAIC") in the very near future. The requirement that an examination report be completed and submitted to the department within sixty (60) days following the completion of the examination according to the instructions issued by the NAIC is one (1) of the standards which the Kentucky Department of Insurance is required to meet. Since there is no statute or administrative regulation which specifically states a time for examination reports to be completed, this emergency administrative regulation is being promulgated to make it clear that an examination report must be prepared and submitted no later than sixty (60) days following the completion of the examination. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on June 15, 1993.

BRERETON C. JONES, Governor
DON W. STEPHENS, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 2:120E. Filing of examination report.

RELATES TO: KRS 304.2-250
STATUTORY AUTHORITY: KRS 304.2-110
EFFECTIVE: June 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 that examiners file an examination report with the Department of Insurance no later than sixty (60) days following the completion of the examination.

Section 1. No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of the examination under oath.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: June 1, 1993
FILED WITH LRC: June 15, 1993 at 11 a.m.

STATEMENT OF EMERGENCY
806 KAR 2:130E

This emergency administrative regulation permits the Commissioner of Insurance disclose information regarding insurance company examinations to other state or federal agency officials, if they agree in writing that the information will be kept confidential. The Kentucky Department of Insurance will be undergoing review for accreditation by the National Association of Insurance Commissioners ("NAIC") in the very near future. Accreditation requires that the commissioner be permitted to disclose information regarding insurance company examinations with other state or federal agency officials, if they agree in writing that the information will be kept confidential. This emergency administrative regulation is being promulgated to clarify the commissioner's authority and to assure that information that is disclosed by the commissioner remains confidential. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Administrative Regulations Compiler on June 15, 1993.

BRERETON C. JONES, Governor
DON W. STEPHENS, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 2:130E. Disclosure of information regarding examinations.

RELATES TO: KRS 304.2-260, 304.2-270
STATUTORY AUTHORITY: KRS 304.2-110
EFFECTIVE: June 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 to any provision of the Kentucky Insurance Code. This administrative regulation provides that the commissioner may disclose information regarding insurance company examinations to other state or federal agency officials, if they agree in writing that the information will be kept confidential.

Section 1. The Commissioner of Insurance may disclose the content of an examination report, preliminary examination report or results, or any matter relating to an examination report, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state, or agency of the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with KRS 304.2-260 and 304.2-270.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: June 1, 1993
FILED WITH LRC: June 15, 1993 at 11 a.m.

STATEMENT OF EMERGENCY
902 KAR 8:040E

This emergency administrative regulation provides definitions of terms that are used in a personnel program applicable to all local health departments except the Louisville-Jefferson County, Lexington-Fayette County, and the Northern Kentucky District Health Departments. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:040E. Definition of terms applicable for the personnel program for local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.170, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. The purpose of this administrative regulation is to provide for definitions of terms used in administrative regulations 902 KAR 8:050 through 902 KAR 8:140 that describe the various components of a personnel administration program applicable for local health departments established under the provisions of KRS Chapter 212.

Section 1. Definitions. As used in administrative regulations 902 KAR 8:050 through 902 KAR 8:140:

(1) "Agency" means a local health department established under the provisions of KRS Chapter 212, except for a health department in a county containing a city of the first class, an urban county health department, or an independent district health department.

(2) "Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position.

(3) "Appeal" means the right, under the provisions of 902 KAR 8:110 to appear before the Local Health Personnel Advisory Council or a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions, provided for under 902 KAR 8:050 through 902 KAR 8:140.

(4) "Appointing authority" means the board of health or other lawfully delegated individual authorized under KRS Chapter 212 to make appointments.

(5) "Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(6) "Cabinet" means the Cabinet for Human Resources.

(7) "Certification of eligibles" means a list of eligibles issued by the Department for Health Services to the appointing authority of an agency certifying that the individuals meet the established minimum qualifications of the position, passed the required examination, and may be considered for employment.

(8) "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required; minimum requirements of training, experience or skill; and other characteristics.

(9) "Classified service" means employment subject to the terms of administrative regulations 902 KAR 8:050 through 902 KAR 8:140 except for:

(a) A health officer employed under the provisions of 902 KAR 8:140; or

(b) An employee appointed on a seasonal, temporary, or emergency basis as described in administrative regulation 902 KAR 8:080.

(10) "Classification plan" means the system of assigning positions to individual classes based on the duties performed.

(11) "Compensation plan" means a series of salary ranges to which classes of positions are assigned so that classifications evaluated by the department as approximately equal may be assigned to the same salary range.

(12) "Compensatory time" means accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to the provisions of KRS Chapter 337 and the Fair Labor Standards Act, 29 USC 206.

(13) "Competitive examination" means a formal process of measuring the qualifications of applicants for employment or promotion.

(14) "Council" means the Local Health Personnel Advisory Council appointed by the Secretary of the Cabinet for Human Resources under the provisions of 902 KAR 8:050.

(15) "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary.

(16) "Department" means the Department for Health Services within the Cabinet for Human Resources.

(17) "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties.

(18) "Disabled veteran" means a veteran who has established by official records of the United States government the present existence of a service connected disability.

(19) "Discrimination" means any administrative decision based in whole or in part on a person's race, sex, age, religion, national origin or disability, except where such decision is supported by a valid occupational qualification.

(20) "Discipline" means any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

(21) "Eligible" means an individual whose name appears on a register for a particular class.

(22) "Eligible list" means a list of names of persons who have been found qualified through suitable competitive examinations for positions or classes of positions.

(23) "Emergency appointment" means the appointment of a person to a position, for a period not to exceed six (6) pay periods, when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

(24) "Flagrant violation" means a breach of state law, agency rules, policies or directives by an employee, which, under the circumstances, constitutes a clear, present or immediately foreseeable threat or danger to the life, safety, health, or welfare of patients, other employees, the subject employee, or general public, or otherwise seriously disrupts the agency's normal course of business.

(25) "Immediate family" means the spouse, parent, child, brother, or sister, or the spouse of either of them, grandparent, grandchildren, mother- or father-in-law, daughter- or son-in-law.

(26) "Job description" means a written description for each classification setting forth the title of the class, the characteristics of

the work, the minimum requirements, and the special requirements including any physical standards deemed necessary to satisfactorily do the work.

(27) "Local health department" means an agency as defined above subject to the provisions of administrative regulations 902 KAR 8:050 through 902 KAR 8:140.

(28) "Minimum qualifications" means a comprehensive statement setting forth the minimum background required as to education and experience.

(29) "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.

(30) "Nonstatus employee" means a provisional, emergency, temporary, or seasonal employee or an employee who has not completed the initial probationary period.

(31) "Initial probationary period" means the period an employee is required to serve prior to becoming a permanent employee in an agency.

(32) "Outstanding merit payment" means a lump sum payment made to an employee based on an employee's outstanding job performance.

(33) "Part-time 100 hour employee" means an employee appointed on a part-time basis to work at least 100 hours per month.

(34) "Performance evaluation" means a method of evaluating each employee on the employee's capability of performing the duties and responsibilities of the job.

(35) "Probationary employee" means an employee serving the required initial probationary period following appointment.

(36) "Promotional probationary period" means a period during which an employee is required to demonstrate fitness for the duties to which the employee has been promoted by actual performance of the duties of the position.

(37) "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(38) "Register" means an officially promulgated list of eligibles for a job classification in the order of their final ratings on a merit examination.

(39) "Salary range" means the rate and range of pay established for a class of positions.

(40) "Seasonal position" means a position established for a specific seasonal purpose and for a specific period of time not to exceed nineteen (19) pay periods.

(41) "Severe infraction" means the violation of agency policy that may result in financial liability or potential litigation or the commitment of an act in the provision of a service that may pose a risk to the individuals being served.

(42) "Status employee" means an employee who has satisfactorily completed the required initial probationary period and is afforded the rights and privileges provided by administrative regulation 902 KAR 8:050 through 902 KAR 8:140.

(43) "Temporary appointment" means an appointment for a period not to exceed thirteen (13) pay periods from a register of eligibles for a period not to exceed a six (6) month period.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 5, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:050E

This emergency administrative regulation establishes the Local Health Personnel Advisory Council as an administrative body with specified responsibilities to advise regarding a merit system program of personnel management for local health departments. This emergency administrative regulation also provides for the administrative support of the merit system by the Cabinet for Human Resources. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:050E. Local Health Personnel Advisory Council for local health departments and administrative support of the council.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 194.170, 211.170, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.190, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation establishes the Local Health Personnel Advisory Council as an administrative body with specified responsibilities to advise the cabinet regarding the merit system program of personnel for local health departments. This administrative regulation also provides for the administrative support of the merit system by the Cabinet for Human Resources.

Section 1. Local Health Personnel Advisory Council. There is hereby created a Local Health Personnel Advisory Council which shall be attached to the department.

Section 2. Composition of Local Health Personnel Advisory Council. (1) The Local Health Personnel Advisory Council shall be composed of five (5) members who shall be appointed by the Secretary of the Cabinet for Human Resources.

(2) A member of the council shall not have held political office or have been an officer in a political organization during the year preceding appointment nor hold such office during term of appointment. A member of the council shall not be an employee of an agency or the department or have been an employee of an agency or department within one (1) year prior to his appointment.

(3) Members of the council shall serve for a term of three (3) years or until successors have been appointed, except that in the first instance two (2) members shall be appointed for one (1) year; two (2) members for two (2) years; and one (1) member for three (3) years. A member appointed to fill a vacancy occurring prior to the expiration of the term shall be appointed for the remainder of the term.

(4) The Local Health Personnel Advisory Council shall have the following duties:

(a) To review and advise the department as to amendments to administrative regulations applicable for the merit system; and

(b) To hear appeals of employees regarding a demotion, suspension, dismissal, or discrimination, and recommend a final order to the department; and

(c) To hear appeals of disqualified applicants or an eligible removed from a register and recommend a final order to the department;

(d) To advise the department in formulating procedures for conducting merit examinations;

(e) To review, at least annually, recommendations of the department regarding revision(s) of the classification and compensation plans;

(f) To promote public understanding of the purposes, policies, and practices of the merit system.

Section 3. Meetings of the Local Health Personnel Advisory Council. (1) Meetings shall be held at least semiannually.

(2) In addition to these regular meetings, special meetings of the Local Health Personnel Advisory Council may be held upon call of the department.

(3) Meetings of the Local Health Personnel Advisory Council shall comply with KRS 61.805-61.845.

Section 4. Administrative Support of the Department. The department shall:

(1) Prepare and score examinations administered by monitors through local health departments;

(2) Prepare, retain, and maintain appropriate registers of eligibles;

(3) Determine the availability of eligibles for appointment;

(4) Certify eligibles for appointment;

(5) Determine the adequacy of existing registers;

(6) Interpret and enforce the merit system regulations;

(7) Maintain a position classification plan and establish classifications;

(8) Approve variations to established entrance salaries;

(9) Initiate and maintain a personnel file, subject to state and federal audit, for each employee of an agency with the minimum contents consisting of the following:

(a) Application for employment;

(b) Notification of appointment;

(c) Forms used for participation in Kentucky's Employees' Retirement System or other retirement system;

(d) Federal and state tax information;

(e) Hour and wage exemption status;

(f) Report of personnel actions approved by an agency and department;

(g) Reports of performance evaluations or disciplinary actions given to employee;

(h) Employee position description which shall include:

1. Title of the position;

2. Duties of the position;

3. Requirements for training and experience necessary to qualify for the position; and

4. Location of work station;

(10) Maintain performance evaluations pursuant to 902 KAR 8:080;

(11) Report administrative activities of the department at regularly scheduled meetings of the Local Health Personnel Advisory Council.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:060E

This emergency administrative regulation provides for the classification and compensation plans for local health departments. The classification plan provides position classification descriptions which describe the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary or desirable for the satisfactory performance of the duties of the various classes. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the job specifications and provides requirements which must be met for salary adjustments for employees. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:060E. Classification and compensation plans for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation provides for the classification and compensation plans for local health departments. The classification plan provides position classification descriptions which describe the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary or desirable for the satisfactory performance of the duties of the various classes. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the job specifications and provides requirements which must be met for salary adjustments for employees.

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Personnel Advisory Council.

(2) The classification plan shall set forth, for each class of positions:

(a) A title; and

(b) A description of the duties and responsibilities; and

(c) The minimum requirements of training and experience; and

(d) Other qualifications that are necessary or desirable for the satisfactory performance of the duties of the class.

(3) The class specifications shall be descriptive and explanatory and used to allocate positions to classes as determined by their duties or responsibilities. The language of class specifications shall not be construed as limiting or modifying the authority which an appointing authority has to change the duties and responsibilities or assign duties to employees which are of similar kind or quality.

(4) Each position in an agency shall be allocated to one (1) of the classes established by the classification plan.

(5) A reallocation or allocation shall be made to new or existing classes as additional classes are established, abolished, or changed.

(6) The department shall allocate newly established positions to classes upon receipt of a statement of duties, responsibilities, and requirements of such positions from the appointing authority.

(7) The department shall:

(a) Maintain the position classification plan by reviewing job descriptions prepared by the appointing authority for appropriate allocation of positions to approved classes; and

(b) Conduct a general review of the classification plan at least annually based on the review of job descriptions and other information.

(8) The department shall change the classification of existing positions through a reclassification if a material and permanent change in the duties or responsibilities of a position occurs.

(a) The employee within a position at the time it is reclassified, shall serve with the same status obtained before the position was reclassified.

(b) A reclassification shall not be permitted during the initial employment probationary period.

(9) An employee who is advanced to a higher pay grade through a reclassification of his position shall have his salary increased to the higher of:

(a) Five (5) percent; or

(b) To the minimum salary assigned to the reclassified position if the employee's salary is below the minimum of the new grade.

(10) The department shall change the allocation of existing positions if it is determined that the position is incorrectly allocated and there has been no substantial change in duties from those in effect when the position was originally classified. If a position is reallocated, the employee within the class of position shall be entitled to serve with the same status obtained before the position was reallocated.

(11) The department shall maintain a master set of all approved class specifications. The department shall provide each appointing authority with a set of the class specifications.

(12) An agency may be required to have approval of the department prior to establishing positions after approval of the agency's budget.

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Personnel Advisory Council. The plan shall take into consideration the following:

(a) Financial conditions of the agencies; and

(b) Experience in recruiting for positions; and

(c) Prevailing rates of pay for services of similar kind and quality; and

(d) Benefits received by employees; and

(e) Consistency in application among local health departments.

(2) The compensation plan shall include minimum, intermediate, and maximum rates of pay for the various classes within the classification plan. The compensation plan shall also be used to determine salary adjustments provided for under this administrative regulation.

(3) The department shall annually review and amend as necessary the compensation plan with the advice of the Local Health Personnel Advisory Council. Amendments shall include changes in minimum, midpoint and maximum salary levels for respective classifications of the classification plan.

(4) The entrance salary of any employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed unless otherwise approved by the department.

(5) A new minimum entrance salary may be established by an agency with the approval of the department if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary. Appointments to the position may be made within the new salary range applicable to the class. If appointments are made at the new established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly established minimum entrance salary.

(6) The department may approve a higher entrance salary for employees entering professional, technical or clerical positions if the individual possesses qualifications in training and experience above the minimum required for the class.

(a) Employees possessing the same qualifications in the same class of positions, in the same agency and who are paid below the salary level of the newly appointed employee, shall have their salary adjusted to the approved entrance salary level.

(b) The salary of an individual meeting these requirements shall not exceed the midpoint salary established for the classification.

(7) If a former employee is reinstated or reemployed in a class for which he was previously employed, the appointing authority may make an appointment at the same pay rate the employee had been paid at the termination of service. An appointing authority may reemploy a former employee at a higher salary rate than previously if justified on the basis of:

(a) Additional qualifications acquired by the employee; or

(b) Established minimum entrance salary is above the former salary; or

(c) Compensation plan changes.

Section 3. Salary Adjustments. (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period. The salary adjustment shall take effect the first pay period following completion of the probationary period. An employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

(2) The agency may, with the approval of the department, annually establish a standard salary adjustment rate, not to exceed five (5) percent, for which all employees shall be eligible and given consideration based on documented satisfactory job performance.

(a) The salary adjustment shall be given at the beginning of the first full pay period following twenty-six (26) full pay periods of continuous service since the established anniversary date.

(b) If an agency does not grant an annual increment no outstanding meritorious lump sum payment shall be approved. (3) An appointing authority may deny an annual increment to an employee for the following reasons;

(a) Documented unsatisfactory work performance;

(b) Excessive absenteeism;

(c) Excessive tardiness;

(d) Record of disciplinary action; or

(e) Failure to cooperate.

(4) An employee whose annual increment is denied shall be notified by the appointing authority at least two (2) weeks prior to the anniversary date.

(5) An employee's anniversary date shall be the first day of the first full pay period upon completion of twenty-six (26) pay periods of continuous service after initial employment.

(6) If an employee receives an increase in salary due to a promotion, the anniversary date shall be changed to be effective the first day of the first full pay period following twenty-six (26) pay periods after the effective date of the promotion.

(7) An employee returning to duty from leave without pay shall receive an annual increment when the employee has completed twenty-six (26) pay periods of service since the date the employee last received an annual increment.

(8) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave;

(g) Is reclassified.

(9) The appointing authority, with the approval of the department may award any permanent, full-time or part-time employee an outstanding meritorious lump sum payment if:

(a) The employee's acts or ideas resulted in significant financial savings to the local health department, or a significant improvement in service to the citizens; or

(b) The employee's job performance is outstanding.

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year consisting

of twenty-six (26) full pay periods based on the annual increment date.

(a) The appointing authority may grant two (2) four (4) percent lump sum payments within the same time period but there shall be at least a thirteen (13) pay period interval between requests.

(b) The appointing authority shall submit written justification to the department for the outstanding merit payment to be effective.

(11) If a new or different salary range is made applicable to a class of position(s), persons employed in positions of that class at the effective date of the adjustment shall have their salary placed at least at the minimum salary of the new range.

(a) An adjustment may be made to an employee's salary level within the new range not to exceed the rate of increase provided in the established new salary range.

(b) An appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(12) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to occupy a position and assume the job duties of an employee on an approved leave of absence or assume additional job duties for a temporary time period.

(a) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent over the salary received prior to detail to special duty.

(b) After completion of the special assignment, the employee shall be transferred back to the former classification with the employee's salary reduced to the salary rate received prior to the detail assignment following completion of the special assignment. An employee shall be entitled to all salary increases he would have received had he not been on special assignment.

(10) If an above minimum entrance rate is established by an agency for a specified class based on documented recruitment needs, the department may approve a salary adjustment for employees in the same class. The adjustment shall not exceed the rate of increase to the newly established minimum. In fixing salaries on an adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(11) The department may approve other salary adjustments with the advice of the Local Health Personnel Advisory Council. Salary adjustments may address special working conditions, after hours adjustment where working hours cannot be adjusted or other specific circumstances.

(12) An appointing authority may request a four (4) percent in range salary adjustment if an employee is assigned permanent job duties and responsibilities which are more difficult than current job duties, but are less than those indicated through a reclassification.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:070E

This emergency administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:070E. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Recruitment of Eligible Individuals. (1) An agency that desires to fill a position, shall announce the position through means that are best suited to attract qualified persons.

(2) An announcement shall be placed in the local newspaper of general circulation. Additional announcements may be posted in important centers throughout the local area and copies sent to newspapers of local, regional or statewide circulation, radio stations, educational institutions, professional and vocational societies, public officials and such other organizations and individuals as deemed necessary.

(3) A public announcement of a position shall specify:

(a) The title and salary range of the class of position; and

(b) Information as to the rates of pay at which appointments are expected to be made; and

(c) The types of duties to be performed; and

(d) The minimum qualifications required; and

(e) The final date on which applications are to be received in the department; and

(f) Veteran's preference; and

(g) The date, time and place of an examination for the position if required; and

(g) All other conditions of competition, including the fact that failure in one (1) part of the examination shall disqualify an applicant.

(4) An application for employment, form CH-36 dated April 1, 1993, shall be required of each individual seeking potential employment with an agency. The application for employment form CH-36, is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday during the office hours of 8 a.m. and 4:30 p.m.

(5) Except in continuous recruitment programs, an application for employment shall be mailed to the department on or before the closing date specified in the announcement as published by the agency or postmarked before midnight on that date.

(6) The department shall be the custodian of all applications.

(7) The department, may refuse to examine an applicant, disqualify an applicant, remove the applicant's name from a register, refuse to certify any eligible on a register, or may consult with the appointing authority in taking steps to remove such person already appointed, if:

(a) The applicant is found to lack specific requirements established for the examination for the class or position; or

(b) The applicant is unable to perform duties of the class; or

(c) The applicant has been convicted of a felony, a job related misdemeanor, or a misdemeanor for which a jail sentence may be imposed; or

(d) The applicant has previously been dismissed from any public service for delinquency, misconduct or other similar cause; or

(e) The applicant made a false statement of material fact in the application; or

(f) The applicant has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment; or

(g) The applicant has directly or indirectly obtained information regarding examinations that the applicant was not entitled; or

(h) The applicant has failed to submit a complete application; or

(i) An applicant has failed to submit the application within the prescribed time limits as prescribed by the agency in the published announcement; or

(j) The applicant has taken part in the compilation, administration, or correction of the examination; or

(k) The applicant has otherwise failed to meet the provisions of this administrative regulation.

(8) A disqualified applicant shall be promptly notified of the action by letter to the applicant's last known address.

Section 2. Examinations. (1) Examinations shall be practical in nature, constructed to reveal the capability of the applicant for the particular position as well as general background and related knowledge. The various parts of the examination may be written, oral, physical, or an evaluation of experience and training, a demonstration of skill, or any combination of types so long as applicants for a position are given the same examination.

(2) Examinations shall be conducted on an open competitive basis and scheduled simultaneously in as many places as are necessary for the convenience of the applicants and as are practicable for proper administration.

(3) The department, in conjunction with an agency, may designate such monitors as necessary to conduct examinations, and may arrange for the use of public buildings in which to conduct the examinations. The department shall provide for the compensation of monitors.

(4) If an oral examination is a part of a total examination for a position, the department, may appoint one (1) or more impartial oral examination boards as needed.

(5) The department shall notify each applicant by mail of the final rating as soon as the rating of the examination has been completed and the register established. An eligible, upon written request and presentation of proper identification, shall be entitled to information concerning his relative position on a register.

(6) The selection method for the following classes is 100 percent qualifying. If the applicant meets the minimum requirements his name shall be placed on the appropriate register.

1001 Public Health Director III
1002 Public Health Director II
1003 Public Health Director I
1103 Director of Administrative Services
1106 Personnel Specialist
1110 Senior Administrative Assistant
1301 Finance Administrator
1305 Purchasing Specialist
1405 Telephone Operator/Receptionist
1410 Data System Coordinator
1411 Data Operator
1501 Program Director
1502 Program Coordinator
1430 Cooperative Vocational Education Student
2001 Director of Community Health Nursing
2002 Community Health Nursing Supervisor
2010 Community Health Nursing Administrator
2101 Community Health Nurse
2103 Senior Community Health Nurse
2104 Nurse Specialist
2111 Advanced Registered Nurse Practitioner
2110 Registered Nurse Applicant
2120 Community Health Nurse Intern
2151 Licensed Practical Nurse Applicant
2152 Licensed Practical Nurse
2153 Senior Licensed Practical Nurse
2201 Aging Services Coordinator
2301 Home Health Aide Trainee
2302 Home Health Aide
2303 Senior Home Health Aide
2401 Social Work Coordinator
2403 Senior Social Worker
2404 Director of Social Services
2501 Director of Nutrition Services
2502 Nutrition Coordinator
2504 Clinical Nutritionist
2602 Speech and Hearing Pathologist
2606 Audiologist
2608 X-ray Technician
2610 Occupational Therapist
2612 Physical Therapist
2701 Laboratory Supervisor
2702 Medical Technologist
2703 Laboratory Technician
2705 Laboratory Assistant
2801 Health Education Coordinator
2803 Senior Health Educator
2806 Director of Health Education
2901 Support Services Coordinator
3001 Director of Environmental Health
3003 Environmental Health Supervisor
3005 Senior Health Environmentalist
4001 Public Health Clinician
4002 Health Officer
4003 Medical Director
4004 Physician VI
4005 Physician V
5001 Maintenance Supervisor
5002 Maintenance Technician
5004 Maintenance Person
5003 Janitor
6001 Food Service Supervisor
6002 Cook
6003 Driver
6004 Meal Deliverer

(7) A vacancy in an agency shall be filled by promotion of a qualified permanent employee except for the following conditions:

(a) No employee of the agency applies or expresses interest in the vacant position; or

(b) The appointing authority determines that no employee eligible or certified by the department is capable of performing the duties and responsibilities of the position.

(8) Promotions shall be based upon individual performance, with due consideration for length of service, and capability of the individual to perform the duties and responsibilities of the new position. A candidate for promotion shall be certified by the department as meeting the qualifications for the position.

(9) A promotional competitive examination shall be given under the direction of the department if an agency determines to fill a vacancy by promotional competitive examination. An employee shall meet the minimum qualifications of the position to be eligible to compete for promotion. A promotional competitive examination shall consist of any combination of the following: written tests, rating of training and experience, evaluation of recorded service ratings and seniority, performance tests, and oral examinations. The same examination shall be administered to all candidates for promotion.

Section 3. Certification of Eligibles. (1) The department shall prepare a register of eligible persons who made a passing score of seventy (70). The names of eligible persons shall be placed on the register in order of their final ratings. If two (2) or more eligibles have final ratings which are identical, their names shall be arranged in the order of their ratings on the written part of the examination, if any or in order of the date of receipt of application. If applications of eligibles have ratings which are identical are received on the same day, the names shall be placed on the certification in alphabetical order.

(2) If a vacancy exists in a class of positions for which there is no appropriate register, the department, may prepare an appropriate register for the class from one (1) or more existing related registers.

(3) The life of each register shall be one (1) year from the date of its establishment. A register may be deemed to be exhausted by the department if fewer than three (3) eligibles remain on the register. If a register is exhausted, each eligible on the register shall be notified by mail at his last known address.

(4) The department may remove the name of an eligible from a register:

(a) For any of the causes stipulated for disqualifying an applicant provided for under Section 3 of this administrative regulation; or

(b) If the eligible cannot be located by the postal authorities as evidenced by the return of one (1) notice or a returned notice marked no forwarding address; or

(c) On receipt of a statement from the eligible stating that he no longer desires consideration for a position; or

(d) If an offer of a probationary appointment to the class for which the register was established has been declined by the eligible; or

(e) An eligible receives a probationary appointment; or

(f) Declines an offer of appointment for which the eligible previously indicated acceptance; or

(g) The eligible fails to report for a scheduled interview without valid reason; or

(h) An eligible fails to maintain a current address as evidenced by the return from postal authorities of unclaimed but properly addressed letters; or

(i) An eligible has been certified three (3) times to an appointing authority and has not been offered employment.

(5) An eligible who is appointed on a probationary basis may request in writing to the department to have his name reinstated to any register at any time before its expiration, upon his request.

(6) The department shall notify the eligible by mail to his last known address of this action and the reasons therefore.

(7) For positions requiring an examination and upon receipt of a request, the department shall certify and submit in writing to the appointing authority the names of available persons.

(a) If one (1) position is involved, the names of the persons whose scores fall within the highest ten (10) scores earned on the examination for that class of position shall be certified.

(b) If there are fewer than the above specified number of eligibles, the available number shall be certified and appointment will be made if there are as many as three (3) available eligibles for each vacancy.

(c) If more than one (1) position is involved, the department shall certify an additional eligible for each position in excess of one (1).

(d) The department shall certify and submit the five (5) highest available scores on the appropriate promotional register, if one exists.

(8) For positions which do not require an examination the department shall certify all names of eligibles to the appointing authority.

(9) The appointing authority may request, in writing to the department, special experience, education, or skills different from the minimum requirements of the class. If, after investigation of the duties and responsibilities of the position, the department approves the request, a certification may be issued to the agency containing the names of those individuals who possess the qualifications specified.

(10) An employee with status, placed in a layoff category, shall have first priority for consideration in filling a vacancy in a classified position for which the employee is qualified in the agency from which laid off.

(a) A status employee in the layoff category shall indicate in writing to the department that he desires reemployment.

(b) No examination shall be required for reemployment in the same job classification from which the employee was laid off.

(c) If a laid-off employee with status desires reemployment in a different job classification, the employee must meet the requirements and pass the required examinations for the job classifications in which he seeks reemployment.

(d) The life of the reemployment register is one (1) year or until the employee is reemployed.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:080E

This emergency administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. The emergency administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:080E. Initial appointment, probationary period, layoffs, performance evaluation and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. This administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed.

Section 1. Initial Appointments. The appointing authority of a local health department shall make an initial appointment of an eligible only from a certification of eligibles issued by the department. The appointing authority shall interview and examine applicants certified

and shall report the final selection to the department.

Section 2. Provisional Appointments. (1) If there are urgent reasons for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending examination and establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) No provisional appointment shall be made until the position has been classified and minimum qualifications established for the class of position. The provisional appointment shall not exceed thirteen (13) pay periods from the date of appointment or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first.

(3) Successive provisional appointments of the same person shall not be permitted. A position shall not be filled by repeated provisional appointments.

(4) Provisional service immediately prior to original appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) For a period of time not to exceed three (3) years since termination of employment from an agency, a permanent employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position without examination, with the same seniority rights and leave status. The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

(2) The individual being considered for reinstatement shall not be required to serve a probationary period. The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement. Accumulated sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency may be used to determine the rate at which the employee earns annual leave.

Section 4. Emergency Appointments. (1) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for provisional appointment, the appointing authority may appoint, with the approval of the department, a person or persons at the minimum entrance salary for the class. An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable. The department may make such investigations as necessary to determine whether an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, or reinstatement to a position under the merit system.

Section 5. Temporary Appointments. (1) If a vacancy occurs in a position having duties of a strictly temporary nature, a certification may be issued by the department of those eligibles, who have indicated a willingness to accept temporary employment in the order of their places on an appropriate register.

(2) The duration of a temporary appointment shall not exceed thirteen (13) pay periods.

(3) The acceptance or refusal of a temporary appointment shall not affect an eligible's standing on a register or eligibility for a probationary appointment.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) Successive temporary appointments of an employee to the same position shall not be made.

Section 6. Seasonal Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a seasonal basis for up to nineteen (19) pay periods to accommodate the following:

(a) Increased work activity of a seasonal nature; or

(b) Work study or job training programs; or

(c) Special projects; and

(d) Summer employment.

(2) Only an applicant meeting the established minimum requirements for the position may be appointed to a seasonal position.

(3) Successive appointments to the same seasonal position shall not be made.

Section 7. Performance Appraisal. (1) The appointing authority shall conduct a performance appraisal for each permanent employee on an annual basis, and for each probationary employee prior to completion of the required probationary period.

(2) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(3) Performance appraisals shall be considered in determining annual and probationary salary advancements and in requesting and approving promotions, demotions, dismissals, and in determining the order of separations due to reduction of work force.

(4) Performance appraisals shall be prepared and recorded on the Employee Performance Appraisal form numbered CH-40, dated April 1993. The Employee Performance Appraisal form CH-40 is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

Section 8. Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in subsection (3) of this section.

(3) The initial probationary period may be extended for the following reasons:

(a) If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence; or

(b) The department, with the advice of the Local Health Personnel Advisory Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications.

(4) At least thirty (30) days prior to the completion of a probationary period, the employee's job performance shall be evaluated to determine if the employee's job performance is satisfactory. The appointing authority shall notify the department as to one (1) of the following actions:

(a) The employee has satisfactorily completed the probationary period and permanent status has been confirmed; or

(b) The employee has not successfully performed the duties and completed the probationary period and shall be dismissed without the right of appeal and hearing.

(5) If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee

shall not be certified to the agency from which separated unless the agency requests otherwise.

(6) The employee, serving a probationary period may be eligible for promotion to a position in a higher class, provided the employee is certified from an appropriate register. If an employee is promoted during a probationary period, the probationary period shall begin with the date of the most recent appointment.

Section 9. Probation Period Following Promotion. (1) A promotional probationary period of thirteen (13) full pay periods shall be required of an employee upon promotion.

(2) If an employee is granted leave in excess of twenty (20) consecutive work days during the promotional probationary period, his initial probation shall be extended for the same length of time as the granted leave to cover the absence.

(3) A performance evaluation shall be completed for the employee prior to completing the probationary period, to determine the employee's ability to perform successfully the job duties.

(4) If approved by the appointing authority, a promoted employee may request to be reverted to a position in the former class during the probationary period.

(5) An employee who has been promoted but fails to successfully complete the probationary period, as documented by the performance evaluation conducted by the appointing authority, shall revert to a position of his former class. If there is no vacancy in the former class the employee may by reverted to a position in a different class if qualified and certified by the department.

(6) Documentation of the reasons for unsuccessful completion shall be provided to the employee and the department.

(7) If a permanent employee is dismissed for cause while serving a promotional probationary period the employee has the right to appeal the dismissal in accordance with 902 KAR 8:110.

Section 10. Resignations. (1) An employee who desires to terminate his service with an agency shall submit a written resignation to the appointing authority.

(2) Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) Failure of an employee to give fourteen (14) calendar day notice shall, unless otherwise approved by the appointing authority, result in the employee forfeiting payment for accrued annual leave.

Section 11. Layoffs. (1) An appointing authority may lay off an employee in the classified service if necessary because of shortage of funds, abolishment of a position, or other material change in the duties or the organization of the agency.

(2) The agency shall submit a plan to the department for approval prior to layoff. The plan shall identify the factors considered and identify the employee(s) proposed to be laid off. The agency shall consider at least the following factors:

(a) Seniority of employees; and

(b) Results of employee performance evaluation(s); and

(c) Qualification of employees; and

(d) Type of appointment or source of funding.

(3) The employee shall be notified of the effective date and given written notice of the reasons for the layoff and the right to be placed on a reemployment register.

(4) No permanent employee shall be separated by layoff if there are provisional, temporary, emergency, seasonal or probationary employees serving in the agency in the same class.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:090E

This emergency administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:090E. Promotion, transfer, and demotion of local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

Section 1. Promotion. (1) An employee may be promoted at any time upon the request of an appointing authority if he meets the minimum requirements of the position having a higher salary and is certified by the department.

(2) The employee shall serve a probationary period to determine through performance evaluation, if the employee can satisfactorily perform the duties and responsibilities of the position.

(3) An employee who is promoted shall have his salary raised to the greater of the following:

(a) The amount required to raise the salary of the employee to the minimum established for the class; or

(b) Four (4) percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Eight (8) percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a four (4) percent increase in salary.

(5) A permanent employee promoted from a classified position to an unclassified position retains his status in the classified service.

(a) If separated from an unclassified position following promotion, an employee shall revert to the class in which he previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department.

(b) Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a permanent employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an

agency, may be made at any time by the appointing authority.

(2) A transfer of a permanent employee from a position in one class to a position in another class, within an agency, having the same entrance salary may be made only with the approval of the appointing authority and upon certification of the department. The department may require a qualifying examination.

(3) An employee of one (1) agency shall not transfer to another agency without prior approval of each appointing authority.

(a) Accumulated annual and sick leave shall be transferred.

(b) Accumulated compensatory leave shall be paid in lump sum by the sending agency.

(c) The annual increment date shall be retained by the employee.

Section 3. Demotions. (1) An employee may be demoted for one (1) of the following reasons:

(a) Documented unsatisfactory employee performance during the promotional probationary period; or

(b) An employee voluntarily requests a demotion and reduction in salary because of inability to perform job duties, inefficiency, or other reasons approved by the appointing authority; or

(c) Documented disciplinary problems or the inability of an employee to perform the duties and responsibilities required of the position; or

(d) Due to a reorganization or reassignment of job duties based on a reorganization plan submitted by an agency and approved by the department.

(2) The salary of an employee who voluntarily requests demotion shall be reduced by five (5) percent if the demotion is to a classification having a one (1) grade lower salary or ten (10) percent if the demotion is to a classification resulting in a decrease of two (2) or more grades in salary.

(3) Except as provided in subsection (5) of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employees current grade level and the grade of the classification to which the employee is demoted.

(4) If a demotion is due to a reorganization of an agency, the plan shall state if a reduction in salary of an employee is to occur.

(5) If an employee is demoted during the initial probationary period, the employee shall continue in his probationary period as if the original appointment had been to the position of the lower class.

(6) An employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall have his salary reduced to the level prior to promotion.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:100E

This emergency administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, due process considerations, and an appeal process. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:100E. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. The administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, predisciplinary action procedures, and an appeal process.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for lack of good behavior or the unsatisfactory performance of job duties.

(2) A classified employee with status shall not be disciplined except for cause.

Section 2. Predisciplinary Action Hearing. (1) Except as provided in subsection (7) of this section, prior to demotion, suspension, or dismissal, a classified employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also state the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or policy violation; and
2. The specific action or activity on which the intent to demote, suspend, or dismiss is based; and
3. The date, time, and place of the action or activity; and
4. The name of the parties involved.

(b) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) No later than five (5) working days after receipt of the notice of intent to demote, suspend, or dismiss, excluding the day the employee receives the notice, the employee may request to appear to reply to the appointing authority.

(3) The meeting shall be held six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be notified in writing fourteen (14) days prior to the action of:

(a) The effective date of the demotion, suspension, or dismissal; and

(b) The statutory, regulatory, or policy violation; and

(c) The specific action or activity on which the demotion, suspension, or dismissal is based; and

(d) The date, time, and place of such action or activity; and

(e) The name of the parties involved; and

(f) That the employee may appeal the demotion, suspension, or

dismissal to the Local Health Personnel Advisory Council no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal;

(g) Provide the employee with the appeal request form.

(6) All appeals shall be submitted on the appeal request form, dated April 1, 1993. The appeal request form is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.

(7) Upon determining that an employee has committed a flagrant violation and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:110E

This emergency administrative regulation provides for a process whereby employees may appeal specific disciplinary actions to the Local Health Personnel Advisory council for reconsideration. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:110E. Disciplinary appeal process applicable for local health department employees.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation provides for a process whereby employees may appeal specific disciplinary actions.

Section 1. Appeals. (1) An employee with status who is demoted, suspended, or dismissed shall have the right to appeal the action. The appeal shall be in writing and mailed to the department no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.

(2) An applicant who has taken an examination may appeal his rating in any part of an examination to assure rating procedures have been applied fairly and equitably. The appeal shall be in writing and mailed to the department no later than thirty (30) days after the date on which notification of the results of the examination was mailed to the applicant.

(3) An eligible whose name has been removed from a register for any of the reasons specified in administrative regulation 902 KAR 8:070, Section 1(7), may appeal the action. The appeal shall be mailed to the department within thirty (30) days after the date on which the notification of removal was mailed to the eligible.

(4) An applicant or employee who has reason to believe that he has been discriminated against because of sex, religious or political opinions or affiliations, race, or national origin, disability, or age in any personnel action may appeal within thirty (30) days of the date of the alleged discrimination.

(5) A request for an appeal, provided for under this section, shall be submitted in writing using the appeal request form, incorporated by reference in administrative regulation 902 KAR 8:100, Section 2(6).

(6) All appeals shall be conducted in accordance with procedures as set forth in Section 2 of this administrative regulation.

Section 2. Hearing Process. (1) The department shall schedule a formal hearing before the Local Health Personnel Advisory Council or a hearing officer designated by the department within sixty (60) days following receipt of the request.

(2) The hearing may be continued at the request of either the employee or the appointing authority.

(3) At the hearing the employee and the appointing authority shall have the right to present witnesses, to be represented by counsel, and to give evidence.

(4) If a hearing officer is designated to hear the appeal, the hearing officer shall make findings of fact, conclusions of law, and recommend a final order to the Local Health Personnel Advisory Council at its next meeting. The Local Health Personnel Advisory Council may adopt the report as submitted, amend the findings and recommendations based on evidence contained, or remand the appeal to the hearing officer for further action as appropriate or rehear the appeal.

(5) The Local Health Personnel Advisory Council shall allow the employee or employee's attorney and the appointing authority to file exceptions to the hearing officers report or grant oral arguments before the Local Health Personnel Advisory Council.

(6) The Local Health Personnel Advisory Council shall, within a reasonable period of time after the hearing, make findings of fact, conclusions of law, and based on the record and recommendations, recommend a final order to the Commissioner of the Department for Health Services. The Commissioner of the Department for Health Services shall make a final decision based on the recommendations of the Local Health Personnel Advisory Council. The department shall promptly notify the employee and the appointing authority of the decision. The decision of the commissioner shall be considered a final order and binding upon the employee and appointing authority.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:120E

This emergency administrative regulation governs the leave provisions applicable for employees of local health departments. These provisions address hours of work, earning of annual and sick time, holiday schedules, other leave provisions and the earning of compensatory time. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to

supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:120E. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation governs the leave provisions applicable for employees of local health departments. These provisions address hours of work, earning of annual and sick time, holiday schedules, other leave provisions and the earning of compensatory time.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The normal work day shall be 8 a.m. to 4:30 p.m. Monday through Friday.

(b) The hours of work and days of work, other than normal, of the agency or specific employees may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) The hours worked in excess of the thirty-seven and one-half (37.5) hours during the standard work week are subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

Section 2. Earning of Annual Leave. (1) Each full-time employee except seasonal, temporary, and emergency employees shall be allowed to earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year
15 years & over	6.1 hours per pay period/158.6 hours per year
20 years & over	7.0 hours per pay period/182 hours per year

(2) Annual leave for full-time employee's shall accrue only when an employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Each part-time employee except a seasonal, temporary, or emergency employee, designated as serving on a part-time 100 hour basis, who works 100 hours or more a month shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 years & over	3.6 hours per pay period/93.6 hours per year
20 years & over	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for the purpose of allowing annual leave for designated part-time 100 hour employees, only those months in which the employee worked at least 100 hours or was on educational leave with pay shall be used. Employees designated as part-time 100 hour employees who work less than 100 hours a month shall not earn annual leave for that month.

(5) Annual leave shall accrue only if an employee is working or on authorized leave with pay. Annual leave shall not accrue when an employee is on authorized educational leave with pay.

(6) Annual leave earned by full-time employees may be accumulated during a calendar year not to exceed the following amounts:

Years of Service	Maximum Amount
0 - 5 years	225.0 hours
5 - 10 years	277.5 hours
10 - 15 years	337.5 hours
15 - 20 years	390.0 hours
Over 20 years	450.0 hours

(7) Annual leave for a designated part-time 100 hour employee who works 100 hours or more a month may be accumulated during a calendar year not to exceed the following amounts:

Years of Service	Maximum Amount
0 - 5 years	120 hours
5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

(8) Annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave at the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon request and approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

(2) Employees shall be charged with annual leave for absence only on days upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) Employees shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement or granted leave without pay in excess of three (3) pay periods.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave, not to exceed the maximum amount allowable.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) Absences due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee, shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75)

standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who works 100 hours or more per month shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the month following the month in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, shall grant sick leave with pay to an employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment; or

(b) Is disabled by sickness or injury; or

(c) Is required to care for a sick or injured member of his immediate family; or

(d) If an employee would jeopardize the health of others at his duty post because of exposure to a contagious disease; or

(e) Has lost by death a member of the employee's immediate family.

(2) Sick leave granted for death in the employee's immediate family shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) If possible, an employee shall request sick leave absence with or without pay prior to the intended use.

(4) If an employee is unexpectedly required to be absent from work in case of illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or disciplinary action.

(5) An employee may be required by the appointing authority to present a statement in the form of personal affidavit, physician's statement, or other statement certifying to the incapacity, examination, and treatment during the time for which sick leave was taken.

(6) If an employee requests leave in excess of five (5) working days a statement from the employees' physician shall accompany the request for leave. The physician statement shall contain the following;

(a) In the physician's judgement the employee is incapable of performing the essential duties of the job; and

(b) Length of time that the physician would estimate that the employee's illness or disability will last; and

(c) Any restrictions which would render the employee in the physician's judgement incapable of performing the essential duties of the job; and

(d) Any special considerations that the physician recommends be applied to accommodate the employee once released to return to work.

(7) An appointing authority may place an employee, who fails to provide a medical statement upon request, on sick leave if:

(a) The employees health might jeopardize others; or

(b) The employees health prevents performance of his duties and responsibilities.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10) Former employees who are reinstated or reemployed shall have their previous accumulated and unused sick leave balances reinstated.

(11) Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy. Maternity leave shall not exceed seven (7) pay periods, unless the appointing authority approves additional maternity leave provided the total leave does not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available.

(a) If sick leave is not available, the employee shall use accumulated annual and compensatory time.

(b) If all leave credit is exhausted, the employee shall be placed on leave without pay.

(3) The employee shall submit a written request for maternity absence which shall include a doctor's statement indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's doctor may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond the normal seven (7) pay periods.

Section 7. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon request of an employee for reasons provided for in Section 6 of this administrative regulation and this section.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay, exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, provided the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic doctor's statements during the sick leave without pay period attesting to the employee's inability to perform job duties.

Section 8. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit.

(2) If an employee on approved sick leave without pay has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If there is no available position which the employee is qualified or is willing to accept, the employee shall be laid off in accordance with administrative regulation 902 KAR 8:080.

(3) An employee who is unable to return to work at the end of one (1) year of sick leave without pay, after being requested by the appointing authority to return to work at least ten (10) days prior to the expiration of such sick leave, shall be dismissed by the appointing authority.

Section 9. Sharing of Sick Leave. (1) An employee who has accrued a sick leave balance of more than seventy-five (75) hours

may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee who is authorized to receive sick leave.

(2) The appointing authority, may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days; and

(b) The employee's need for absence and use of leave are certified by a licensed practicing physician(s); and

(c) The employee has exhausted his accumulated sick leave, annual leave and compensatory leave balances; and

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) No employee shall directly or indirectly intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section.

Section 10. Court Leave. An employee shall be entitled to a leave of absence from duties, without loss of pay or time, on days during which the employee is subpoenaed by a court to serve as a juror or witness except in those cases where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work.

Section 11. Military Leave. (1) An employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his duties without the loss of pay or time, upon request, to serve under orders on training duty for a period not to exceed seventy five (75) hours in any one (1) calendar year. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

Section 12. Voting Leave. The appointing authority shall allow each employee ample time to vote. The absence shall not be charged against accumulated leave.

Section 13. Special Leave of Absence. (1) The appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with the approval of the department may grant a leave of absence with or without pay for a period not to exceed twenty-six (26) pay periods for the following purposes:

(a) Assignment to and attendance at college, university, or business school for the purpose of training in subjects related to the work of the employee and which will benefit the agency; or

(b) Purposes other than the above which are deemed to be in the best interest of the agency.

(3) An agency shall comply with the Family and Medical Leave Act, PL 103-3, if applicable.

(4) Special leave of absence approved under this section may be continued for an additional period not to exceed twenty-six (26) pay periods with the approval of the department.

Section 14. Absence Without Leave. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of such absence. The absence without leave may constitute grounds for disciplinary action.

Section 15. Holidays. (1) Agency employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;
(b) The third Monday in January;
(c) The third Monday in February;
(d) One-half (1/2) day for Good Friday;
(e) The last Monday in May;
(f) The fourth day of July;
(g) The first Monday in September;
(h) The fourth Thursday in November plus one (1) extra day;
(i) The twenty-fifth of December and one (1) extra day;
(j) Presidential election day.

(2) If any of the days enumerated above falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) Employees, designated as part-time 100 hours, who are scheduled to work on a holiday listed above, shall be eligible for the holiday.

(4) An employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(5) Employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 15. Earning of Compensatory Time. (1) An employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for all time worked that the employee does not receive overtime pay subject to the provisions of the Fair Labor Standards Act, 29 USC 206, and Kentucky Wage and Labor Law KRS Chapter 337. The maximum amount of compensatory time that can be accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

Section 17. Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least seventy-five (75) hours of compensatory time may request payment for compensatory time in excess of seventy-five (75) hours. If payment is approved by the appointing authority, it shall be at the employee's regular rate of

pay.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and reduce the employee's compensatory leave balance accordingly.

(4) The appointing authority may direct an employee to use accumulated compensatory time to reduce accumulation to an acceptable level.

(5) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(6) Upon the death of an employee, the employee's estate shall be paid for any unused accumulated compensatory time.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:130E

This emergency administrative regulation governs participation of local health department employees in political activities. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:130E. Participation of local health department employees in political activities.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. This administrative regulation governs participation of local health department employees in political activities.

Section 1. Political Activities of Employees. An employee in the classified service shall not:

(1) Serve on or for any political committee, party, or other similar organization; or

(2) Serve as a delegate or alternate to a caucus or party convention, but may vote in the selection of delegates to a party convention and in the selection of precinct committeemen and committeewomen; or

(3) Solicit or handle political contributions; or

(4) Solicit the sale of or sell items or tickets for any political party, faction, or candidate, however an employee may voluntarily purchase such items or tickets; or

(5) Serve as an officer of a political club, as a member or officer of any of its committees, or address a club on any partisan political matters, or be active in organizing it; or

(6) Serve in connection with the preparation for, organizing or conducting a political meeting or rally or address a political meeting on any partisan political matter except to vote; or

(7) Engage in partisan activity at the polls during primary, regular or special elections in the position of checker, challenger, or watcher; or

(8) Solicit votes and assist voters to mark ballots; or

(9) Become a candidate for nomination or election to a federal, state, county, or municipal office, except for a school board district office, which is to be filled in an election in which party candidates are involved or for which compensation is paid; or

(10) Solicit others to become candidates for nomination or election to those offices described above; or

(11) Distribute partisan campaign literature or material; or

(12) Initiate or circulate partisan political nominating petitions; or

(13) Canvass a district or solicit political support for a party, faction, or candidate, either in person or in writing.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 8:140E

This emergency administrative regulation describes the process of appointing directors of health departments and the provision of coverage or noncoverage of the provisions of the merit system. The need to promulgate this administrative regulation as an emergency is to reestablish and provide for a merit system for local health department employees and comply with KRS Chapter 211 that requires the Cabinet for Human Resources to supervise the personnel functions of local health departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about May 14, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:140E. Appointment of a health officer or a health department director of a local health department.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170
EFFECTIVE: May 19, 1993
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. KRS 212.170, 212.230, and 212.870 describes the requirements for and process of appointing a health officer or a health department director for a local health department. This administrative regulation describes the process of appointing a health officer or a health department director of a health department and the provision of coverage or noncoverage of the merit system.

Section 1. Appointment of Health Officer. (1) An agency shall be under the direction of a health officer appointed in accordance with the provisions of KRS 212.170, 212.230, or 212.870.

(2) The health officer shall be an unclassified employee and hold office at the pleasure of both the board of health of the agency and the department.

(3) The health officer in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:070, Recruitment, examination and certification of eligibles for local health departments; and

(b) 902 KAR 8:080, Initial appointment, probationary period and performance evaluation; and

(c) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(d) 902 KAR 8:140, Appointment of a health officer or a health department director of a local health department.

Section 2. Appointment of Health Department Director. (1) In the absence of a health officer provided for in this administrative regulation, an agency shall be under the direction of a health department director who shall meet minimum qualifications of education and experience established by the department.

(2) A qualified individual appointed or promoted to the position of health department director after the effective date of this administrative regulation, shall be employed in the unclassified service and hold office at the pleasure of both the board of health of the agency and the department.

(3) Individuals who are in the position of physician director or health department director shall maintain their status after the effective date of this administrative regulation.

(4) A health department director in the unclassified service shall be subject to the following administrative regulations:

(a) 902 KAR 8:070, Recruitment, examination and certification of eligibles for local health departments; and

(b) 902 KAR 8:080, Initial appointment, probationary period and performance evaluation; and

(c) 902 KAR 8:120, Leave provisions applicable to employees of local health departments; and

(d) 902 KAR 8:140, Appointment of health officers of local health departments.

Section 3. Removal of a Health Officer or Health Department Director in the Unclassified Service. (1) Except as provided for in Section 2(3) and (4) of this administrative regulation, if a health officer or health department director in the unclassified service is removed by the board of health or the department, he shall be notified in writing, and within fourteen (14) days may make a written request for a hearing.

(2) If no request is made, the removal shall become effective upon the expiration of fourteen (14) days.

(3) If a request for hearing is made, the hearing shall be held at the office of the agency within fourteen (14) calendar days after the request is received by the board of health of the agency.

(4) The health officer or director of health shall not be removed until the hearing has been held and a decision rendered by the board of health of the agency and the department.

(5) Upon termination of employment, an employee who was promoted to the health officer or health department director position may revert to the position from which he was promoted or may be considered for a vacant position for which he qualifies in the agency. The employee shall have had at least five (5) years of continuous service with the agency prior to the promotion to be considered for reversion. The reversion shall be subject to the approval of the board of health of the agency.

(6) An employee originally appointed to the health officer or health department director position, may only be reverted to a position in the classified service for which he qualifies.

RICE C. LEACH, M.D. Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 14, 1993
FILED WITH LRC: May 19, 1993 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 20:004E

Emergency regulation 902 KAR 20:004E is necessary in order to allow the establishment and expansion of ambulance services in situations where the nonavailability of ambulance service presents a threat to the life, safety or health of any Kentuckian, and to allow the Kentucky Reformatory at LaGrange to establish a nursing facility for its inmates, with the funds appropriated by the 1992 General Assembly for that particular purpose. An ordinary administrative regulation will not allow the Interim Office of Health Planning and Certification to address these matters in a timely fashion. The emergency regulation also contains various technical and grammatical changes. The emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. The ordinary administrative regulation will also be filed with the Regulations Compiler.

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

CABINET FOR HUMAN RESOURCES
Interim Office of Health Planning & Certification

902 KAR 20:004E. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075, Executive Orders 92-419, 92-540
EFFECTIVE: May 18, 1993
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.075 require the promulgation of administrative regulations relating to certificate of need applications and review procedures and requirements for batching, issuing advisory opinions, cost escalations and cost overruns and progress reports.

Section 1. Definitions. (1) "Capital expenditure authorized" means the amount of the capital expenditure approved by the interim office to implement a proposal.

(2) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been obligated as prescribed in KRS 216B.015(28).

(3) "Cost overrun" means an increase in the capital expenditure authorized on a certificate of need which has been obligated without hearing officers' approval.

(4) "Hearing officers" means those persons appointed by the Secretary of the Cabinet for Human Resources to perform the adjudicatory and decision-making functions of the Interim Office of Health Planning and Certification.

(5) "Improvement" means change or addition to the premises of an existing facility so as to enhance its capability to deliver those services which it is authorized to offer under its existing license or under an outstanding certificate of need approval.

(6) "Interim office" means the Interim Office of Health Planning and Certification created by Executive Order 92-419, dated April 27, 1992, and any successor office or agency.

(7) "Mobile health services" means those services which provide medical services in various locations and which in some instances utilize a specially equipped vehicle such as a van, trailer or mobile home. These services include mobile diagnostic imaging and examination services, mobile treatment services, and any other medical or dental services provided through the use of a mobile vehicle or performed at various locations.

(8) "New construction" means building projects other than those which constitute the repair, renovation, alteration or improvement tc the physical plant of an existing health facility.

(9) "Public information channels" means the Office of Communi-

cations in the Cabinet for Human Resources.

(10) "Review commences" means the date of public notice of the appropriate batching cycle for the particular application after it is deemed complete.

(11) "Temporary basis" means on an occasional and irregular basis or until the applicant's proposal for permanent acquisition or regular use by a health care facility is reviewed under the formal or nonsubstantive review process.

Section 2. Criteria. In determining whether to issue or deny a certificate of need the hearing officers shall utilize the following criteria:

(1) Consistency with plans. To determine conformance with this criterion, the applicant shall address and the hearing officers shall consider the relationship of the proposal to the state health plan.

(2) Need and accessibility. To determine conformance with this criterion, the applicant shall address and the hearing officers shall consider:

(a) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, individuals with disabilities and other underserved groups are likely to have access to those services.

(b) The contribution of the proposed service to meeting the health-related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and people with disabilities), particularly those needs identified in the state health plan. In this regard, the hearing officers shall consider:

1. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations will use the proposed services if approved.

2. The extent to which the applicant offers alternative means, other than through admission by a physician, by which a person will have access to its services (e.g., admission through a clinic or emergency room).

(c) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(d) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(e) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(f) Whether the approval of the proposal will adversely impact the public's access to needed services.

(3) Interrelationships and linkages. To determine conformance with this criterion the applicant shall address and the hearing officers shall consider:

(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.

(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(c) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(4) Costs, economic feasibility, and resource availability. To determine conformance with this criterion the applicant shall address and the hearing officers shall consider:

(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded or relocated.

(b) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.

(c) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.

(d) The impact of the proposal on the financial resources of the overall health care delivery system.

(e) In the case of construction or renovation projects:

1. The costs and methods of the proposed construction or renovation, including the costs and methods of energy provision; and

2. The probable impact of the construction or renovation project reviewed on the costs of providing health services by the persons proposing the construction or renovation project and on the costs and charges to the public of providing health services by other persons.

(f) The effect of competition on the supply of the health services being reviewed, and whether the approval of the application will unnecessarily increase the cost of health care to the public.

(g) Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

(5) Quality of services. To determine conformance with this criterion the applicant shall address and the hearing officers shall consider the quality of care provided by the applicant in the past or the qualifications of the principals who will provide the health service which would assure that quality care will be provided and any perceivable detrimental effects of the proposal on the quality of similar services in the area to include: [~~:~~

~~(6) The hearing officers shall also consider:~~]

(a) Whether the approval of the applicant's proposal will have an adverse impact on the quality of care provided by any person offering the same or similar services in any portion of the applicant's proposed service area due to decreased volume or number of procedures.

(b) Whether the applicant will be able to comply with applicable licensure requirements.

Section 3. Proposed New Use. If a person acquires major medical equipment [~~not located in a health facility~~] without a certificate of need and proposes at any time to use that equipment to serve inpatients of a health care facility, the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a health care facility only on a temporary basis in the case of an emergency, a natural disaster, a major accident, or an equipment failure.

Section 4. Review Process. (1) Prior to submitting an application for certificate of need, applicants shall first file a letter of intent with the interim office on Form #1 (Letter of Intent (1992)). Letters of intent shall be filed at least thirty (30) days prior to filing an application for certificate of need. Letters of intent shall not be required for requests for nonsubstantive review under Section 7 of this administrative regulation.

(2) A letter of intent shall be valid for a period of one (1) year. If an application is denied, a new letter of intent shall be filed in order to resubmit the application. If an application is withdrawn prior to a final decision, a new letter of intent must be filed.

(3) Upon receipt of a letter of intent, the interim office shall acknowledge receipt of the letter of intent and shall provide the applicant with the appropriate form as follows:

(a) Form #2a (Certificate of Need Application (1992)); or

(b) Form #2b (Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services (1992)).

(4) An original certificate of need application and two (2) ~~[four (4)]~~ copies shall be filed with the interim office according to the timetable set out in subsection (9) of this section.

(5) Fifteen (15) days after receipt of the application, the interim office shall acknowledge receipt and shall notify the applicant whether or not the application is complete.

(6) If the application is not complete, the notice to the applicant shall give the applicant the option of completing the application by submitting additional information or of notifying the interim office that the applicant elects for the application to be processed as originally submitted.

(7)(a) Upon receipt of the requested additional information or upon receipt of a letter from the applicant stating that he elects for the application to be processed as originally submitted, the interim office shall deem the application complete and shall give notice of the beginning of review.

(b) Applications must be declared complete at least six (6) working days prior to the date of public notice in order to be included in the public notice. In order to submit additional information to be made a part of the record after the application has been declared complete, it must be introduced at a public hearing.

(8) The notice of completeness shall include the schedule for the review and the period in which a public hearing may be requested by the applicant and other affected persons. The notice to members of the public and third party payors shall be provided through public information channels. Notice to all other known affected persons shall be by mail.

(9) Batching review cycles shall be as follows:

TYPE OF PROPOSAL	Applications must be filed by third Wednesday of:	Month of public notice, ninety (90) days prior to decision date	Month of decision, third Wednesday of:
(a) Acute, psychiatric, rehab, chemical dependency facilities, psychiatric residential treatment facilities and other related components in the SHP (except specialized equipment and services) such as IC/CC, neonatal, and surgical services (including free-standing ambulatory surgical center) and birthing centers.	October, January, April, July	November, February, May, August	February, May, August, November
(b) Skilled nursing, nursing home, intermediate care, personal care, or nursing facility.	November	December	March
(c) Personal care or IC MR/DD	November, February, May, August	December, March, June, September	March, June, September, December
(d) Transplantation, magnetic resonance imaging, lithotripter, radiation therapy, C.T. scanner, cardiac catheterization, open heart surgery, and new technological developments.	December, June	January, July	April, October
(e) Day health care center, ambulatory care clinic, rehab agency, hospice, home health or home health/hospice.	October, January, May, July	November, February, June, August	February, May, September, November
(f) Ambulance, NE health transportation, and air ambulance services.	November, January, April, June, August	December, February, May, July, September	March, May, August, October, December
(g) All mobile services except those covered under specialized equipment and services.	October, December, February, April, June, August	November, January, March, May, July, September	February, April, June, August, October, December

(h) Any proposals not listed above will be placed in the most appropriate cycle as determined by the interim office.

(i) Any proposals granted nonsubstantive review status as specified in KRS 216B.095(3)(a)(b)(c)(d)(e)(f) and (g)[~~, plus technical modifications (CON)~~] will be processed in accordance with KRS 216B.095(1).

(10) The interim office shall notify the applicant by certified mail and any party to the proceeding by regular mail of the hearing officers' final action on a certificate of need application.

(11) The written notification shall include:

(a) Verification that the criteria have been met or, if the application is inconsistent with any criteria, the reasons for approval notwithstanding the inconsistency;

(b) Amount of capital expenditure authorized, where applicable;

(c) If the application is disapproved, the reasons for the disapproval; and

(d) Notice of appeal rights.

(12) All applications not declared complete with a year from the date of filing shall expire and shall not be reviewed.

(13) If an application for certificate of need is disapproved, it may not be refiled for a period of twelve (12) months, absent a showing of a significant change in circumstances to be determined by a hearing officer.

Section 5. Certificate of Need Hearings. (1) Notice of the date, time and location of the hearing shall be mailed to all known affected persons (other than third party payors and members of the public) at least ten (10) days before the date of the hearing. Notice to third party payors and members of the public shall be provided through public information channels.

(2) Hearing requests may be withdrawn by written requested filed with the interim office. If the hearing has already been scheduled, the written request to withdraw must be received at least three (3) working days in advance of the scheduled hearing date. In order for a public hearing to be cancelled, all persons who requested the hearing must agree in writing to cancellation. Agreement of other affected persons shall not be required.

(3) The hearing officers may:

(a) Conduct prehearing conferences to resolve issues not in dispute or not requiring an evidentiary record; and

(b) Issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(4) The hearing officerSsmay, by prehearing order, require affected persons to submit to the interim office five (5) working days prior to the scheduled date of the hearing [~~within five (5) working days after receipt of the prehearing order~~] the following:

(a) A list of witnesses on Form #3 (Witness List (1993));

(b) A list of exhibits they intend to introduce on Form #4 (Exhibit List (1993)); or

(c) A list of those persons who will enter an appearance [~~which may appear~~] on behalf of a party on Form #5 (Notice of Appearance (1993)).

(5) The hearing officers may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) There shall be no prehearing discovery allowed of any affected person by any affected person, other than the exchange of exhibits.

(7) The record on any certificate of need application shall be final for evidentiary purposes upon completion of the public hearing and may be reopened only upon order of the hearing officers.

(8) Upon completion of a public hearing, parties to the proceedings may submit proposed findings of fact and conclusions of law for consideration by the hearing officers, within reasonable time limits set by the hearing officers.

Section 6. Request for Reconsideration. (1) The hearing officers shall act upon request for reconsideration no later than thirty (30) days following receipt of a request.

(2) If reconsideration is granted, a reconsideration hearing shall be held within thirty (30) days of the decision to grant reconsideration, and a final decision shall be made no later than thirty (30) days following the reconsideration hearing.

Section 7. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), if a proposal described in this section requires certificate of need approval, it will be granted nonsubstantive review status:

(a) Technical modifications to an approved certificate of need;

(b) Cost overruns of the capital expenditure authorized by an approved certificate of need;

(c) [~~(b)~~] Emergency circumstances which, if not promptly acted upon, would pose a threat to the life, health and safety of any citizen of the Commonwealth;

1. Emergency circumstances shall include acts of God, fire, vandalism, structural or mechanical failure and other situations which pose a life, health or safety threatening circumstance. Emergency circumstances will be deemed to exist if ambulance services are not available within a thirty (30) minute response time.

2. An applicant acting under this subsection may proceed to relieve any of these listed emergency circumstances provided the:

a. Office is notified in writing prior to an action; and

b. Application is submitted within thirty (30) days of the occurrence of the emergency.

(d) [~~(c)~~] New construction which does not involve a substantial change in bed capacity, a substantial change in a health service, or the addition of major medical equipment;

(e) [~~(d)~~] Applications proposing the use of existing mobile services and equipment to provide health care access in unserved geographic areas of the Commonwealth;

(f) [~~(e)~~] Applications proposing the use of existing mobile services to provide health care access for which the Kentucky General Assembly has specifically appropriated funds; and

(g) Department of Corrections applications proposing the establishment or construction of nursing facility beds for which the Kentucky General Assembly has specifically appropriated funds.

(2) Procedures for nonsubstantive review shall be as follows:

(a) The original certificate of need application and two (2) [~~four (4)~~] copies, with a request for nonsubstantive review shall be submitted to the interim office.

(b) Within fifteen (15) days of the receipt of the application, the interim office shall acknowledge receipt of the application in writing to the applicant, and shall notify the applicant whether or not the application is complete.

(c) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the interim office upon receipt of the

request for additional information, that he elects for the application to be processed as originally submitted.

(d) Upon receipt of the requested additional information by the interim office, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted, the interim office shall declare the application to be deemed complete.

(e) The hearing officers' decision to grant or deny nonsubstantive review status shall be provided to the applicant and notice of the decision to conduct a nonsubstantive review shall be provided to other known affected persons (other than members of the public and third party payors) by mail no later than the tenth day after the application has been deemed complete. The notice of the review to members of the public and third party payors shall be provided through public information channels.

(f) If nonsubstantive review status is denied, the applicant may request a public hearing by filing a request with the interim office within ten (10) days of the notice to deny nonsubstantive review. As applicable, hearings shall be conducted as provided by KRS 216B.085.

(g) If a certificate of need is denied following a nonsubstantive review and a formal review is requested, no letter of intent shall be required, but the filing of the request for nonsubstantive review shall be considered compliance with any requirement for a letter of intent.

Section 8. Conditions Relative to a Certificate of Need. (1) A person shall not transfer from one (1) legal applicant to another an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without first obtaining a certificate of need.

(2) Other certificates of need may be transferred to the new owner of the facility or service if a change of ownership occurs prior to the implementation of the project for which the certificate of need was issued.

(3) A certificate of need approved for establishment of a new health facility or the replacement of an existing facility is valid [~~issued~~] only for the location stated on the certificate.

(4) A certificate of need holder shall notify the interim office of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the decision to make the change has been determined.

Section 9. Administrative Cost Escalations and Overruns. (1) A certificate of need using Form #2c (1993) shall be required for an escalation or cost overrun of the capital expenditure authorized by an approved certificate of need in all instances where there is a substantial change in the project, or where the escalation or overrun exceeds the following limits:

(a) Twenty (20) percent of the capital expenditure authorized or $100,000, whichever is greater, in the case of projects with a capital expenditure of less than $500,000;

(b) Twenty (20) percent of the capital expenditure authorized, in the case of projects with a capital expenditure of $500,000 or greater, but less than $5,000,000;

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, in the case of projects with a capital expenditure of $5,000,000 or greater, but less than $25,000,000;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, in the case of projects with a capital expenditure of $25,000,000 or greater, but less than $50,000,000; or

(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000 in the case of projects with a capital expenditure of $50,000,000 or greater.

(2)(a) Requests for administrative cost escalations or cost overruns shall be submitted to the interim office, on the following forms:

1. Form #6 (Cost Escalation (1992)); or
2. Form #7 (Cost Overrun (1992)).

(b) The requests shall include:

1. Amount of the escalation of overrun;
2. Factors causing the escalation or overrun; and
3. Information to assure that the scope of the project as originally approved has not changed.

(c) The hearing officers shall review all requests for administrative cost escalations and overruns and the interim office shall notify the certificate of need holder within thirty (30) days of receipt whether the requested escalation or overrun meets the requirements of subsection (1) of this section.

(3) The certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135.

[~~(4) A certificate of need holder who obligates an amount exceeding the capital expenditure authorized without receiving an approved escalation per subsection (1) of this section is subject to the appropriate penalty per KRS 216B.990.~~]

Section 10. Timetables and Standards for Implementation. (1)(a) As a [~~one (1) of the~~] condition for the issuance of a certificate of need, all certificate of need holders shall submit [~~a report of~~] progress reports on Form #8 (Progress Report (1993 [~~1992~~])) at six (6) month intervals as [~~according to the timetables and standards~~] established in this section or more frequently if required by the interim office, until such time as the project has been deemed complete by the interim office.

(b) A certificate of need shall be deemed complete, when the project has been approved for licensure and occupancy by the Division of Licensing and Regulation or the appropriate license has been obtained, a final cost breakdown has been submitted, and for projects for which a certificate of need has been issued for a specific service area, the certificate holder shall submit documentation that services are being provided to all of the licensed service area.

(c) A certificate of need or portions thereof, [~~(b) The hearing officers~~] may be revoked [~~the certificate of need, or portions thereof,~~] for failure to submit reports as required.

(2) Certificate of need holders shall be sent notice specifying the date each progress report is due.

(3) The first progress report [~~shall be due six (6) months from the date the certificate was issued and~~] shall include the following:

(a) On all projects for purchase of equipment only, a copy of the purchase order;

(b) For all [~~construction~~] projects involving the acquisition of real property, evidence of an option to acquire the site;

(c) For all construction/renovation projects, evidence that schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Division of Licensing and Regulation. [~~, a copy of the deed or the option to acquire the site.~~]

(4) For projects not deemed complete a second progress report [~~shall be due twelve (12) months from the date of the certificate of need was issued and~~] shall include the following: [~~documentation that:~~]

(a) Documentation that beds in all projects for conversion of beds are licensed [~~complete~~];

(b) Documentation that all projects for addition of new services or expansion of existing services, not involving construction or renovation or the installation of equipment, are approved for licensure and occupancy by the Division of Licensing and Regulation and licensed, if applicable; and [~~complete;~~

~~(c) Schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources for construction projects.~~]

(c) [~~(5) The second progress report for~~] All construction or renovation projects shall [~~also~~] include:

1. [~~(a)~~] Schedule for project completion with projected dates;
2. [~~(b)~~] Evidence of preliminary negotiation with financial agent; and

3. [(c)] Evidence of preliminary negotiation with contractors.

(5) For projects not deemed complete, a third progress report shall include the following:

(a) For construction/renovation projects:

[(6) Within eighteen (18) months after a certificate of need has been issued, a third progress report shall be submitted which shall include the following information regarding all construction projects:]

1. [(a)] Copy of deed or lease of land;

2. Documentation of final financing. [(b) Evidence that the holder has sufficient capital obligated to complete the project.] If the source of capital is to be a financing agreement, the holder must have evidence that a final enforceable agreement or note has been executed;

3. [(c)] Documentation that final plans have been submitted to the Department of Housing, Buildings and Construction and the Division of Licensing and Regulation [Cabinet for Human Resources];

4. [(d)] Enforceable contract with construction contractor;

(b) [(c)] On all projects for purchase of equipment only, evidence of approval for licensure and occupancy by the Division of Licensing and Regulation [that equipment has been installed].

(6) For projects not deemed complete, a fourth progress report shall include documentation of final plan approval by the Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and that the walls and roof are up and plumbing is roughed in on all construction/renovation projects.

(7) For projects not deemed complete, a fifth progress report shall include documentation that construction/renovation is progressing according to schedule for project completion on all construction/renovation projects.

(8) For projects not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure and occupancy by the Division of Licensing and Regulation and where applicable, that the appropriate license has been obtained for the project.

(9) For projects not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the interim office with a written statement showing cause why the certificate should not be revoked. The interim office may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule of completion, subject to progress reports which the interim office may require.

[(7) Within two (2) years after a certificate of need has been issued, a fourth six (6) month report shall be submitted which shall verify that all construction projects have the walls and roof up and plumbing roughed in.]

(10) [(8)] Within six (6) months following licensure [completion] of a project for which a certificate of need has been issued for a specific service area, the [all] certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(11) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 11. Advisory Opinions. The process for seeking an advisory opinion from the hearing officers shall be as follows:

(1) Requests for advisory opinions shall be completed on Form #9 (Advisory Opinion (1992)).

(2) The hearing officers may require verification of information and may request additional documentation, if necessary.

(3) The hearing officers shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an opinion or of receipt of additional information.

(4) An affected person [party] may request a public hearing regarding a written advisory opinion by requesting same from the interim office in writing within thirty (30) days of the public notice of the advisory opinion which shall be published in the monthly certificate of need newsletter and disseminated through public information channels. If a public hearing is not requested, the advisory opinion shall be the final action of the administrative agency, subject to judicial review. Failure to request a public hearing shall not constitute a failure to exhaust administrative remedies. [final determination.]

(5) Advisory opinion hearings shall be conducted pursuant to the provisions of Section 5 of this administrative regulation.

Section 12. Final Decisions. All final decisions regarding certificate of need related matters will be decided by the individual hearing officer to whom that particular matter is assigned.

Section 13. Incorporation by Reference. (1) "Form #1 (Letter of Intent (1992))", "Form #2a (Certificate of Need Application (1993 [1992]))", "Form #2b (Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services (1993 [1992]))", "Form #2c (Certificate of Need Application for Change of Location, Ownership, Replacement, Cost Escalation or Cost Overrun (1993))", "Form #3 (Witness List (1993 [1992]))", "Form #4 (Exhibit List (1993 [1992]))", "Form #5 (Notice of Appearance List (1993 [1992]))", "Form #6 (Cost Escalation (1992))", "Form #7 (Cost Overrun (1992))", "Form #8 (Progress Report (1993 [1992]))" and "Form #9 (Advisory Opinion (1993 [1992]))", "Form #10 (Acquisition of a Health Facility Notice of Intent (1993))" are incorporated by reference.

(2) These forms may be inspected, copied or obtained at the Interim Office of Health Planning & Certification, Cabinet for Human Resources, 275 East Main, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.

GREG LAWTHER, Acting Executive Director
FONTAINE BANKS, Secretary
APPROVED BY AGENCY: April 29, 1993
FILED WITH LRC: May 18, 1993 at 10 a.m.

STATEMENT OF EMERGENCY
905 KAR 2:001E

The purpose of these administrative regulations is to comply with KRS 199.892, which requires the Cabinet for Human Resources to promulgate administrative regulations to establish procedures to cover a range of areas to promote, expand and improve the quality of child care for children in Kentucky. The function of these administrative regulations is to set standards for licensure of child care facilities in the areas of definition of terms, staff qualifications, physical facilities, staff to child ratio, health and sanitation, transportation and special programs. It was necessary to promulgate emergency regulations to close an existing gap in Kentucky's child care licensure review process. These administrative regulations direct the agency to search out and act upon any findings that suggest the possibility that operation of a child care facility could pose a threat to the health and safety of Kentucky's children. The proposed administrative regulations state that any existing licensed child care facility or applications for licensure may be denied, suspended or revoked based on the findings of a state review. The negative action may take place if the child care facility operator or a person working or living at the facility has abused, neglected or exploited a child or adult, or has had a human services center or facility registration; certification, permit or license revoked or denied by the state. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about June 15, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

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

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
EFFECTIVE: July 7, 1993
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to define terms used for child day care facilities.

Section 1. Definitions. These definitions shall be used in 905 KAR 2:001, 905 KAR 2:011, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(1) "Cabinet" means the Cabinet for Human Resources.

(2) "Caregiver" means child day care staff, including volunteers, who work in a child day care facility.

(3) "Child day care staff" means persons, including volunteers, who work in a child day care facility.

(4) "Day care" means care of a child in a facility which provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Director" or "provider" means the person responsible for the day-to-day operation of a facility or program for the care of children.

(6) "Facility" means:

(a) A Type 1 day care facility which is a facility:

1. Other than a dwelling unit which regularly receives four (4) or more children; or

2. Including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(b) A Type II child day care facility which:

1. Is a home or dwelling unit that is the full-time residence of the licensee; and

2. Regularly provides care apart from parents for seven (7), but not more than twelve (12) children.

(c) The following child day care settings including:

1. Day care;
2. Preschool;
3. Nursery;
4. Child care provided by employers for employees;
5. Kindergartens not accredited by the Kentucky Department of Education pursuant to 704 KAR 5:050;
6. Child care in recreational programs;
7. Montessori;
8. Headstart; and
9. Before or after school child care.

(d) The following child care settings shall not be included:

1. Summer camps certified by the Kentucky Department for Health Services as "youth camps" and providing care for school-age children;

2. Programs operated under Kentucky Department of Education preschool administrative regulations;

3. Grades one (1) through twelve (12) in private schools;

4. Summer programs operated by religious organizations in which a child attends no longer than two (2) weeks;

5. Child care programs operated by the armed services;

6. Child care provided while parents are on the premises other than the employment and educational site of parents;

7. Child care provided by educational programs which includes parental involvement with the care of the child including development of parenting skills;

8. Facilities operated by a religious organization while religious services are being conducted; and

9. Respite care to provide relief for the primary caregiver of a child for a specific period of time.

(7) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;
(b) Family child care home;
(c) Adult day care center;
(d) Adult day health care facilities;
(e) Family care home;
(f) Group homes for the mentally retarded or developmentally disabled;
(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;
(h) Intermediate care facilities;
(i) Nursing facilities;
(j) Nursing homes;
(k) Personal care homes;
(l) Skilled nursing facilities;
(m) Psychiatric residential treatment facilities;
(n) Child caring facilities;
(o) Child placing agencies;
(p) Rural primary-care hospitals;
(q) Alzheimer nursing homes;
(r) Youth camps;
(s) Boarding home;
(t) Alternate intermediate services for the mentally retarded or developmentally delayed.

(8) "Infant " means a child under one (1) year of age.

(9) "Nighttime care facility" means a facility in which children are received for regular, full, or part-time care during the night. The hours of a facility providing nighttime care shall conform to the hours established by the state fire marshal for care given after six (6) p.m.

(10) "Premises" means the building and contiguous property in which day care is provided and licensed.

(11) "Qualified substitute" means a person who meets the requirements of a caregiver.

(12) "Regularly" means the provision of child day care services at a facility for more than ten (10) hours per week.

(13) "Related" means the children, grandchildren, nieces, nephews, or children in legal custody of the operator of the facility.

(14) "Secretary" means the Secretary for the Cabinet for Human Resources.

(15) "School-age child" means a child attending kindergarten, elementary or secondary education.

(16) "Tactile activities" means activities of or relating to the sense of touch.

(17) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(18) "Twelve (12) clock hours of annual training" means a Cabinet for Human Resources approved program of child development training that is completed by employees and owners who directly care for children as governed by KRS 199.896.

(19) "Twelve (12) clock hours of orientation and child development training" means a Cabinet for Human Resources approved program that is completed by employees and owners who directly care for children, six (6) hours of which shall be completed within the first three (3) months of employment as governed by KRS 199.896 and the remaining six (6) hours shall be completed within the first year.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
905 KAR 2:011E

The purpose of these administrative regulations is to comply with KRS 199.892, which requires the Cabinet for Human Resources to promulgate administrative regulations to establish procedures to cover a range of areas to promote, expand and improve the quality of child care for children in Kentucky. The function of these administrative regulations is to set standards for licensure of child care facilities in the areas of definition of terms, staff qualifications, physical facilities, staff to child ratio, health and sanitation, transportation and special programs. It was necessary to promulgate emergency regulations to close an existing gap in Kentucky's child care licensure review process. These administrative regulations direct the agency to search out and act upon any findings that suggest the possibility that operation of a child care facility could pose a threat to the health and safety of Kentucky's children. The proposed administrative regulations state that any existing licensed child care facility or applications for licensure may be denied, suspended or revoked based on the findings of a state review. The negative action may take place if the child care facility operator or a person working or living at the facility has abused, neglected or exploited a child or adult, or has had a human services center or facility registration, certification, permit or license revoked or denied by the state. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about June 15, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:011E. Repeal of 905 KAR 2:010.

RELATES TO: KRS 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
EFFECTIVE: June 7, 1993
NECESSITY AND FUNCTION: 905 KAR 2:010, Standards for all child day care facilities, is no longer required because 905 KAR 2:001, Definitions for 905 KAR Chapter 2, 905 KAR 2:090, Child care facility licensure, 905 KAR 2:110, Child care provider requirements, 905 KAR 2:120, Child care facility health and safety standards, and 905 KAR 2:130, Child care discipline contain the substance and content of 905 KAR 2:010.

Section 1. 905 KAR 2:010, Standards for all child day care facilities, is hereby repealed.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
905 KAR 2:090E

The purpose of these administrative regulations is to comply with KRS 199.892, which requires the Cabinet for Human Resources to promulgate administrative regulations to establish procedures to cover a range of areas to promote, expand and improve the quality of child care for children in Kentucky. The function of these administrative regulations is to set standards for licensure of child care facilities in the areas of definition of terms, staff qualifications, physical facilities, staff to child ratio, health and sanitation, transportation and special programs. It was necessary to promulgate emergency regulations to close an existing gap in Kentucky's child care licensure review process. These administrative regulations direct the agency to search out and act upon any findings that suggest the possibility that operation of a child care facility could pose a threat to the health and safety of Kentucky's children. The proposed administrative regulations state that any existing licensed child care facility or applications for licensure may be denied, suspended or revoked based on the findings of a state review. The negative action may take place if the child care facility operator or a person working or living at the facility has abused, neglected or exploited a child or adult, or has had a human services center or facility registration, certification, permit or license revoked or denied by the state. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about June 15, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:090E. Child care facility licensure.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
EFFECTIVE: June 7, 1993
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish licensure requirements for child day care facilities.

Section 1. Application. Prior to licensure, a complete application shall be submitted to the cabinet. The application for a license to operate a day care center, L&R-204, herein incorporated by reference, may be obtained from the Office of Inspector General, 4th Floor Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky 40621. The application may be denied in accordance with Section 6 of this administrative regulation.

Section 2. License Issuance. (1) An individual, partnership, corporation, or other entity who has had a human services center certification, license, registration or permit to operate a human services center denied or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet has initiated denial or revocation action shall not apply for a license to operate a child care facility for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for a license after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If a license is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the child care facility shall be inspected on at least a quarterly basis. Inspections shall be unannounced.

(2) A license shall be issued for:

(a) A specified physical location;

(b) Operation by a designated sponsor or owner;

(c) Age categories;

(d) A specified maximum number of children to be on premises at one (1) time including children related to the licensee. The number of children for which the facility is licensed shall be determined by:

1. Available space as determined by the State Fire Marshall's

Office in conjunction with the cabinet;

2. Adequacy of program;

3. Equipment; and

4. Staff.

(e) Nighttime care, if provided; and

(f) Transportation, if provided.

(3) The license shall list the services to be provided by the facility.

(4) To qualify for a license, a child day care facility shall:

(a) Comply with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;

(e) Have liability insurance in the amount of $100,000 per child per occurrence; and

(f) Comply with provisions of this administrative regulation and 905 KAR 2:001, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(5)(a) The facility shall be in compliance with subsection (4) of this section or shall have submitted an acceptable plan of correction.

1. Compliance shall be ascertained through on-site inspections of the facility.

2. Regulatory violations identified during these inspections shall be transmitted in writing to the facility.

(b) The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected.

(c) Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan.

1. If the plan is unacceptable, the reasons shall be specified.

2. In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days.

(6) A license shall be issued when the facility has met the requirements contained in this administrative regulation and KRS 199.896.

(7) A license shall not be transferable. A change in ownership of a facility shall require a new application and fee. If circumstances covered by the license change, as listed in 905 KAR 2:110, Section 4(4)(b) through (e), notification shall be made in writing to the cabinet. These changes shall not require an additional fee.

(8) The license shall be posted in a conspicuous place.

(9) A facility shall not begin operation without a license to operate from the Cabinet for Human Resources.

(10) A facility operating without having a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be:

(a) Eighty (80) dollars for initial licensure for a Type I facility;

(b) Forty (40) dollars for initial licensure of a Type II facility; or

(c) Forty (40) dollars for renewal licensure.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the initial and renewal licensure application. Initial application fee and renewal fees shall not be refunded if a survey has been made by the Cabinet for Human Resources or the State Fire Marshall's Office.

Section 4. Inspections. Representatives of the cabinet shall at all times have the authority to make unannounced inspections of facility's:

(1) Premises;

(2) Records required by 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 through 905 KAR 2:130; and

(3) Programs.

Section 5. Renewal. (1) Licenses shall be renewed annually.

(2) The facility shall comply with the requirements of Sections 2 and 4 of this administrative regulation.

Section 6. Basis for Denial or Revocation. The Cabinet for Human Resources may deny or revoke a license or application:

(1) For failure to meet the standards of this administrative regulation;

(2) If the provider, an adult living in the provider's home or person under the supervision of the provider has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult;

(3) If the provider, an adult living in the provider's home:

(a) Has abused, neglected or exploited a child or an adult; or

(b) Is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.

(4) If the provider has had a human services center or facility registration, certification, permit or license denied or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet initiates denial or revocation action.

Section 6. Right of Appeal. (1) If a license or application has been denied or revoked, the licensee shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the secretary.

(2) Upon receipt of the request for a hearing:

(a) The secretary or his representative shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing.

(b) The secretary shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(c) The hearing officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. If license denial or revocation is upheld, the cabinet shall specify the date by which the facility shall close and the licensee shall be notified in writing.

(4) If one (1) of the grounds for denial, suspension or revocation set forth in Section 6 of this administrative regulation exists and the condition creates an immediate danger to the children in care, the cabinet may suspend or revoke the license immediately.

(a) The provider may request a postdeprivation hearing in writing within fifteen (15) days of receipt of the notice of suspension or revocation. The request shall be mailed to the Office of the Inspector General, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) If requested, the cabinet shall conduct a hearing within thirty (30) days of receipt of the request. The hearing may be continued at the request of the provider.

Section 7. Incorporation by Reference. (1) The form necessary for the implementation of the application for license shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Inspector General's Office, CHR Building, 4th Floor, 275 East Main Street, Frankfort, Kentucky, office hours 8 a.m. - 4:30 p.m.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
905 KAR 2:100E

This emergency administrative regulation amends the current regulation which establishes standards for the issuance, monitoring, renewal, denial, revocation, and suspension of a mandatory certification program for family child care homes. This administrative regulation imposes minimum staff-to-child ratios and health and safety requirements for certified family child care homes. It is necessary to promulgate an emergency regulation to enable the Department for Social Services, as the agency responsible for child protection, to use the resources available to deny, suspend or revoke a certification if the provider, adult living in the provider's home, or person under the supervision of the provider has had a human services center or facility certification, registration, permit or license revoked or has abused, neglected or exploited a child or an adult. This amendment also prohibits an applicant from applying for certification, if the applicant has had a human services center or facility certification, registration, permit or license denied or revoked, for five (5) years and establishes criteria for compliance and training prior to applying for certification for a family child care home. This amendment clarifies the administrative regulation regarding liability insurance and enables the cabinet to require providers to obtain liability insurance. Other health and safety issues include the provision that requires a certified provider caring for more than four (4) infants, including the certified provider's own or related infants, to employ an assistant, and the requirement for the certified provider to obtain cardiopulmonary resuscitation (CPR) training by July 1, 1994. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about June 15, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:100E. Certification of family child care homes.

RELATES TO: KRS 17.165, 199.898, 199.8982 [~~Acts 1992, c. 57, Section 1 and 2, p. 412-415~~], 42 USC 602
STATUTORY AUTHORITY: KRS 194.050, 199.8982 [~~Acts 1992, c. 57, Section 1 and 2, p. 412-415~~]
EFFECTIVE: June 7, 1993
NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.8982 [~~SB 211~~], the Department for Social Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children. [~~This administrative regulation contains the substance of 905 KAR 2:070 which is herein repealed.~~]

Section 1. Definitions. These definitions shall be used in this administrative regulation.
(1) "Assistant" means a person:
(a) Sixteen (16) years of age or older;
(b) Under direct supervision of a provider or substitute provider; and
(c) Has obtained a criminal records check and tuberculosis skin test.
(2) "Cabinet" means the Kentucky Cabinet for Human Resources.
(3) "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.
(4) "Commissioner" means the Commissioner for the Department for Social Services.
(5) "Family child care home" as governed by KRS 199.8982 [~~SB 211~~] and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children.
(6) "Home" means the private primary residence of the provider.
(7) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:
(a) Day care center;
(b) Family child care home;
(c) Adult day care center;
(d) Adult day health care facilities;
(e) Family care home;
(f) Group homes for the mentally retarded or developmentally disabled;
(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;
(h) Intermediate care facilities;
(i) Nursing facilities;
(j) Nursing homes;
(k) Personal care homes;
(l) Skilled nursing facilities;
(m) Psychiatric residential treatment facilities;
(n) Child caring facilities;
(o) Child placing agencies;
(p) Rural primary-care hospitals;
(q) Alzheimer nursing homes;
(r) Youth camps;
(s) Boarding home;
(t) Alternate intermediate services for the mentally retarded or developmentally delayed.
(8) [~~(7)~~] "Infant" means a child under one (1) year of age.
(9) [~~(8)~~] "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.
(10) [~~(9)~~] "Provider" means an owner, operator or person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:010 [~~2:090~~].
(11) [~~(10)~~] "Provider's own child" means the providers's own children and children in legal custody.
(12) [~~(11)~~] "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.
(13) [~~(12)~~] "Related child" means a certified provider's grandchildren, nieces and nephews.
(14) [~~(13)~~] "School-age child" shall be considered as one attending kindergarten or above.
(15) [~~(14)~~] "Special needs child" means children who have multiple or severe problems and the Department for Social Service staff has confirmed the need for ongoing specialized care.
(16) [~~(15)~~] "Substitute provider" means a person:
(a) Who is eighteen (18) years of age;
(b) Has obtained a criminal records check and a tuberculosis skin test; and
(c) Is available to provide care in a family child care home.
(17) [~~(16)~~] "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The department shall be responsible for the certification of family child care homes.
(2) Authorized representatives of the department shall have the authority to:
(a) Inspect premises;
(b) Review records required by this administrative regulation; and

(c) Review the program of family child care homes.

(3) Inspections by the department shall be unannounced.

(4) A provider shall apply for certification if the provider is caring for four (4) to six (6) unrelated children and may apply if caring for three (3) or fewer children as governed by KRS 199.8982 [SB 211].

(5) A person who has had a human services center or facility certification, license, registration or permit to operate a human services center denied or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for certification after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If certification is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the family child care home shall be inspected on at least a quarterly basis. Inspections shall be unannounced as governed by KRS 199.8982.

(6) [(5)] A provider making application for certification shall:

(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference herein;

(b) Complete the DSS-79, Self-Check List, incorporated by reference herein;

(c) Meet the minimum requirements as governed by KRS 199.8982 [SB 211];

(d) Submit a criminal records check for adult persons living in the home;

(e) Comply with provisions set forth in Sections 5 through 11 of this administrative regulation. [; and]

[(f) Within three (3) months of the date of preliminary permission to operate, demonstrate completion of training as governed by SB 211;

(g) comply with deficiencies cited during the inspection of the home specified in subsection (2) of this section.]

(7) [(6)] Upon receipt of the application and fee, staff of the department shall:

(a) [Staff shall] Review the application [and, if acceptable, shall issue a written preliminary permission to operate]; and

(b) Conduct an [initial] inspection of the home [shall be made by a representative of the department] as governed by KRS 199.8982 [SB 211].

(8) [(7)] If the requirements have been met, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;
2. Limit of children to be served;
3. Identification number; and
4. Effective and expiration dates.

(b) The certification shall be valid for the certified provider [caregiver] and the address listed. A change of location [address or move change] shall require a new certification application and inspection as specified in subsections (6) and (7) of this section. [be reported to the Department for Social Services and an updated DSS-79 completed.]

(9) [(8)] If the provider does not [wish or cannot] comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, [then] the application shall be denied.

(10) [Section 3. Renewal. (1)] The application for [renewal] certification process shall be repeated every two (2) years.

Section 3. Denial, Suspension, or Revocation. [(2)] The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(1) [(a)] Provider, [or] an adult living in the provider's home or person under the supervision of the provider:

(a) [1.] Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or

(b) [2.] Refuses to provide a criminal records check; [or]

(2) Provider or/and an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(3) Provider [(b) Family child care home] fails to comply with certification standards set forth in this administrative regulation; or

(4) Provider has had a human services center or facility registration, certification, permit or license denied or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial or revocation action.

[(3) The provider shall obtain liability insurance.]

Section 4. Appeal. (1) If the cabinet denies, suspends, or revokes [or refuses to renew] a certification, the cabinet shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(2) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receiving the notice of the action from the cabinet.

(3) Upon receipt of the request for hearing, the commissioner, or [commissioner's] designee, shall notify the provider in writing within fifteen (15) days of the time and place of the hearing. The commissioner, or designee, shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(4) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision of the hearing officer shall be final. The provider shall be notified in writing of the decision of the hearing officer.

(5) If denial or revocation of certification is upheld, the commissioner's or designee's notification shall specify the date by which the family child care home shall close.

(6) If one (1) of the grounds for denial, suspension or revocation set forth in Section 3 of this administrative regulation exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

(a) The provider may request a postdeprivation hearing in writing within fifteen (15) days of receipt of the notice of suspension or revocation. The request shall be mailed to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) If requested, the department shall conduct a hearing within thirty (30) days of receipt of the request. The hearing may be continued at the request of the provider.

(7) [(6)] A family child care home continuing to have four (4) to six (6) unrelated children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 5. Standards for the Provider. (1) Qualifications of provider and staff:

(a) The provider shall be at least eighteen (18) years of age;

(b) The provider shall meet minimum requirements as governed by KRS 199.8982 [SB 211]; and

(c) Beginning with the second year of operation, the provider shall participate annually in at least six (6) hours of training in child development approved by the Department for Social Services.

(2) Staff-child ratio.

(a) A provider shall not provide care for more unrelated children than the number of children for which the family child care home is certified

(b) [~~(a)~~] If more than four (4) infants, including the certified provider's own or related infants, are in care, the certified provider shall employ an assistant.

(c) [~~(b)~~] A certified provider shall not care for more than six (6) children under the age of six (6) years old. This shall include the certified provider's own or related children.

(d) [~~(c)~~] The maximum number of children in the care of a certified provider, including the providers' own or related children, shall not exceed ten (10).

(3) Within three (3) months of the date of application for certification the provider shall:

(a) Demonstrate completion of training as governed by KRS 199.8982; and

(b) Obtain liability insurance.

(4) The provider shall be annually certified in cardiopulmonary resuscitation (CPR). The effective date of this requirement shall be July 1, 1994. However, the effective date may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1994, contingent upon the assessability of CPR training in all areas of the Commonwealth.

Section 6. The Family Child Care Home Environment. (1) The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(2) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(3) The home shall be free of hazards and the following items shall be kept inaccessible to children:

(a) Medications and drugs;

(b) Cleaning supplies, poisons and insecticides;

(c) Guns, knives, scissors and sharp objects;

(d) Power tools, lawn mowers, hand tools, nails and other equipment;

(e) Matches, cigarettes, lighters and flammable liquids;

(f) Alcoholic beverages;

(g) Plastic bags; and

(h) Litter and rubbish.

(4) Electrical outlets not in use shall be covered.

(5) Electric fans, floor furnaces, or freestanding heaters or fi replaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(6) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

(a) Police;

(b) Fire station;

(c) Emergency medical care, rescue squad; and

(d) Poison control center.

(7) Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(8) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(9) The provider shall maintain first aid supplies that are easily accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing unexpired items approved by the American Red Cross.

(10) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(11) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(12) Outdoor stationary play equipment shall be securely anchored.

(13) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(14) Health and sanitation for the child care environment shall require that the provider:

(a) Have a home that is kept clean, uncluttered and free of insects and rodents;

(b) Have a water supply properly located, protected, adequate, and of a source approved by the local health department;

(c) Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;

(d) Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

(e) Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty (40) degrees or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation or use;

(f) Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;

(g) Serve only pasteurized milk or milk products;

(h) Screen windows and doors used for ventilation;

(i) Have household pets vaccinated for rabies;

(j) Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;

(k) Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be provided for each child and shall be changed at least weekly or if they become soiled or wet.

(15) Program for children. A plan for daily activities and routines shall be established.

(16) Children shall be released from the family child care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; and

(c) A person in an emergency designated over the telephone by the parent.

Section 7. To assure a healthy environment, the provider shall:

(1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;

(2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and shall include the following information:

(a) The child's name, address, and date of birth;

(b) The names of individuals to whom the child may be released;

(c) The general status of the child's health;

(d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;

(e) The names and phone numbers of persons to be contacted in an emergency situation;

(f) The name and phone number of the child's physician and preferred hospital; and

(g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.

(3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;

(4) Prohibit prescription medications or aspirin to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian; [~~and~~]

(5) Administer nonprescription medication to a child only with written daily request of parent or guardian; and [~~.~~]

(6) The provider shall maintain a child care program which

assures affirmative steps are taken to protect children from abuse or neglect as governed by KRS Chapter 620.

Section 8. Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

(1) Have written permission from a parent or guardian to transport his child;

(2) Have a car or van equipped with seat belts which allows each child to be individually secured;

(3) Require that each child shall have a seat, be individually seat-belted and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat in good repair;

(4) Have a valid driver's license issued by the Division of Motor Vehicles;

(5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and

(6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, [~~138.655, and~~] 186.020 and Chapters 189 and 189A.

(7) Never leave children in a vehicle unattended by an adult.

(8) Never use the back of pickup trucks to transport children.

Section 9. Child Records. The provider shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Human Resources or as governed by this administrative regulation.

Section 10. The program shall ensure ongoing communication with a child's parent by:

(1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;

(2) Make available a copy of the certification standards to each parent;

(3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; and

(4) Post and provide to each parent copies of children and parent rights pursuant to KRS 199.898 [~~SB 211~~].

Section 11. The provider shall comply with the following:

(1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(2) Wash hands with soap and water before and after diapering a child.

(3) Use sanitary procedures when preparing and serving food.

(4) Assure that children shall not share cups, eating utensils, wash cloths or towels.

(5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.

(6) Prohibit smoking in the presence of children in care.

(7) The provider or other person in the home shall not use physical punishment:

(a) A child shall not be:

1. Handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking and spanking; or

2. Placed in a locked room, closet, box or other confined space;

(b) The provider or other person in the home shall not:

1. Use disciplinary methods which humiliate, shame or frighten the child; or

2. Use harsh or demeaning language in the presence of the children;

(c) Discipline shall not be:

1. Delegated to another child; or

2. Related to food, rest or toileting:

a. Food shall not be withheld or given as a means of discipline;

b. A child shall not be disciplined for lapses in toilet training; or

c. A child shall not be disciplined for not sleeping during rest time.

(8) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.

(9) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.

(10) Infants in care shall be held during feeding and bottles shall never be propped.

(11) If overnight care is provided, the provider shall:

(a) Remain awake until every child in care is asleep;

(b) Sleep on the same level as infants and toddlers; and

(c) Provide comfortable, clean and safe bedding for each child.

(12) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.

(13) Provide opportunities for outdoor play or fresh air.

(14) Be able to recognize symptoms of childhood illnesses.

(15) Visually supervise children who are awake and be able to respond to the children immediately.

(16) Be able to provide basic first aid.

(17) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 12. Incorporation by Reference. (1) Forms necessary for the implementation of the certification of family child care homes shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Department for Social Services, Cabinet for Human Resources Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

Section 13. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
905 KAR 2:110E

The purpose of these administrative regulations is to comply with KRS 199.892, which requires the Cabinet for Human Resources to promulgate administrative regulations to establish procedures to cover a range of areas to promote, expand and improve the quality of child care for children in Kentucky. The function of these administrative regulations is to set standards for licensure of child care facilities in the areas of definition of terms, staff qualifications, physical facilities, staff to child ratio, health and sanitation, transportation and special programs. It was necessary to promulgate emergency regulations to close an existing gap in Kentucky's child care licensure review process. These administrative regulations direct the agency to search out and act upon any findings that suggest the possibility that operation of a child care facility could pose a threat to the health and safety of Kentucky's children. The proposed administrative regulations

state that any existing licensed child care facility or applications for licensure may be denied, suspended or revoked based on the findings of a state review. The negative action may take place if the child care facility operator or a person working or living at the facility has abused, neglected or exploited a child or adult, or has had a human services center or facility registration, certification, permit or license revoked or denied by the state. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about June 15, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

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

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
EFFECTIVE: June 7, 1993
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish provider requirements for child day care facilities.

Section 1. General. (1) The licensee shall be responsible for the operation of the facility in accordance with 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(2) Staff shall be instructed in the requirements for operation and a copy of the minimum standards shall be available for their use.

(3) Information concerning children, their parents, relatives, or guardians shall be kept in strict confidence by the staff, except as otherwise required by law.

(4) Volunteers shall comply with the policies and procedures of the facility.

(5) Program policies and procedures shall be in writing and shall include personnel policies, job descriptions, organization charts, chain of command, and other procedures pertaining to the operation of the facility.

(6) Activities of persons living in a facility that is the dwelling unit shall not interfere with the day care program.

(7) Good personal hygiene shall be practiced by persons in the facility.

(a) Caregivers shall wash hands with soap and warm running water after diapering or toileting each child.

(b) Caregivers shall wash hands with soap and running water immediately before feeding children.

(8) The services to be provided within the facility shall be clearly stated when the application is made. A written statement of services and policies shall be given to parents.

(9) Parents or persons exercising custodial control of a child shall be permitted to visit the facility during regular hours of operation.

(10) The director or provider shall be responsible for the following:

(a) Development of a child care program which meets the requirements of this administrative regulation and 905 KAR 2:090, 905 KAR 2:120 and 905 KAR 2:130;

(b) Development of facility plans, policies and procedures;

(c) Supervision of personnel and their conduct at the facility, carrying out of personnel policies, scheduling daily activities, and management of staff meetings;

(d) Evaluation of the instructional activities of staff;

(e) Assurance that additional staff is available during cooking or cleaning hours if necessary to maintain regulated supervision of the children; and

(f) Provision for health, safety and comfort of children.

Section 2. Records. (1) The following records shall be maintained at the facility for five (5) years:

(a) Sufficient records to identify the individual children and to enable the person in charge to communicate with the parents or persons designated as being responsible for the child either at their home or place of employment, and in a medical emergency, with the family physician;

(b) Each child's medical history, along with authorization for emergency medical care, signed by the parent or guardian and left with the facility director at enrollment;

(c) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized in accordance with 902 KAR 2:060 shall be on file within thirty (30) days of admission;

(d) Permission forms for trips off the premises signed by the parent or guardian;

(e) Daily attendance records of children;

(f) For each employee, a copy of the results of a negative tuberculin skin test or chest x-ray prior to employment and every two (2) years thereafter;

(g) A written schedule of staff working hours;

(h) A written record of staff training;

(i) A written plan for staff development;

(j) A written record of quarterly fire, earthquake and tornado drills;

(k) A written plan or diagram outlining the course of action in the event of natural or manmade disaster posted in a prominent place;

(l) Each facility shall obtain a criminal records check directly from the Justice Cabinet prior to initial employment of staff with supervisory or disciplinary authority over a minor, including cooks, bus drivers, substitutes and volunteers. If the volunteer does not replace staff, is never alone with children, and has no supervising responsibility, he shall not be considered a volunteer for the purpose of criminal records check;

(m) A written record of reports to the cabinet required in Section 4(1) of this administrative regulation; and

(n) The facility shall post the following for public inspection in the director's office or lobby:

1. A copy of the statement of deficiencies reports the facility has received from the cabinet and the plans of correction for the calendar year and permit interested parties to inspect facility files relating to deficiency statements and plans of correction;

2. A description of the services currently provided by the facility;

3. A listing of the rates currently charged for services provided by the facility;

4. A listing together with the charges for the services and items not included in the basic rate for which parents may be charged separately;

5. A copy of each court order pertaining to the quality of care or services provided in the facility; and

6. A copy of children and parental rights pursuant to KRS 199.898.

(2) Subsection (1) of this section shall not be construed to limit access to public records otherwise allowed pursuant to the provisions of KRS 61.872 to 61.884.

Section 3. Staff Requirements. (1) A director of a Type I facility providing child care shall:

(a) Be twenty-one (21) years of age;

(b) Have a high school diploma or a General Equivalency Diploma (GED);

(c) Meet one (1) of the following requirements:

1. Master's degree in Early Childhood Education and Development;

2. Bachelor's degree in Early Childhood Education and Development;

3. Master's degree or a bachelor's degree in a field other than

Early Childhood Education and Development, plus twelve (12) clock hours of child development training;

4. Associate degree in Early Childhood Education and Development;

5. Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, plus two (2) years of verifiable full-time paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

6. Child development associate (CDA) plus one (1) year of verifiable paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

7. Diploma in Child Development Services from Kentucky Tech (Dictionary of occupational title: Director: preschool; Teacher: preschool); or

8. Three (3) years of verifiable full-time paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

(2) A director of a Type II facility providing child care shall:

(a) Meet the requirements for a Type I facility; or

(b) Be twenty-one (21) years of age;

(c) Have a high school diploma or GED;

(d) Have twelve (12) hours of orientation and child development training; and

(e) Meet one (1) of the following requirements:

1. Certificate in child development services from Kentucky Tech (Dictionary of occupational title, child care assistant);

2. One (1) year of verifiable paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

(3) A director of a licensed facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under subsection (1) of this section.

(4) The following staff requirements shall apply to a facility:

(a) A facility shall not employ a person convicted of an act involving the abuse, neglect or exploitation of a child as specified in 905 KAR 2:090, Section 6(2);

(b) A staff person shall be on duty who is annually certified in cardiopulmonary resuscitation (CPR), and currently trained in first aid by a certified instructor approved by the cabinet. This training shall be in addition to the twelve (12) clock hours requirement in subsections (1) and (2) of this section;

(c) One (1) adult shall be designated as being in charge. If the director is not present in the facility, the adult left in charge shall carry out the duties of the director;

(d) A minimum of two (2) qualified substitutes shall be available in case of need;

(e) The minimum of adult workers in a facility shall be sufficient to ensure that minors under eighteen (18) years of age and student trainees are under direct supervision. A person under the age of sixteen (16) shall not be counted as staff for the staff to child ratio;

(f) Controlled substance or alcohol use shall not be permitted on the premises during hours of operation;

(g) Smoking shall be permitted only in designated areas away from the children;

(h) Staff members shall remain awake while on duty except as specified in 905 KAR 2:120, Section 1(5)(f); and

(i) Require for a facility that is the full-time residence of the licensee that adults living in the home have on file at the facility:

1. Criminal records check; and

2. Tuberculosis skin test or, if positive, results of a chest x-ray.

(4) Twelve (12) clock hours of orientation and child development training during the first year and twelve (12) clock hours of annual training thereafter shall be required and shall be documented in writing by the trainer.

Section 4. Reports Made to the Cabinet for Human Resources. (1) The following shall be reported within twenty-four (24) hours:

(a) Communicable disease to the local health department in accordance with KRS 214.010;

(b) An accident or injury requiring extensive medical care, hospitalization, or death;

(c) An incident that results in legal action by or against the facility which affects a child or personnel; and

(d) An incident involving fire or other emergency.

(2) An incident of child abuse, neglect or dependency shall be reported as specified in KRS Chapter 620.

(3) A change of director shall be reported within one (1) week.

(4) Notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership or sponsorship or major stockholder in corporation;

(b) Change of location;

(c) Increase in capacity;

(d) Hours of operation; and

(e) Change of services in the following categories:

1. Infant;

2. Toddler;

3. Two (2) years to school-age;

4. School-age;

5. Nighttime care; and

6. Transportation.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
905 KAR 2:120E

The purpose of these administrative regulations is to comply with KRS 199.892, which requires the Cabinet for Human Resources to promulgate administrative regulations to establish procedures to cover a range of areas to promote, expand and improve the quality of child care for children in Kentucky. The function of these administrative regulations is to set standards for licensure of child care facilities in the areas of definition of terms, staff qualifications, physical facilities, staff to child ratio, health and sanitation, transportation and special programs. It was necessary to promulgate emergency regulations to close an existing gap in Kentucky's child care licensure review process. These administrative regulations direct the agency to search out and act upon any findings that suggest the possibility that operation of a child care facility could pose a threat to the health and safety of Kentucky's children. The proposed administrative regulations state that any existing licensed child care facility or applications for licensure may be denied, suspended or revoked based on the findings of a state review. The negative action may take place if the child care facility operator or a person working or living at the facility has abused, neglected or exploited a child or adult, or has had a human services center or facility registration, certification, permit or

license revoked or denied by the state. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about June 15, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

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

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
EFFECTIVE: June 7, 1993
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish requirements for health and safety standards for child day care facilities.

Section 1. Child Care Services. (1) Minimum staff-child ratios and group size for an operating facility shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size*
Birth - 1 year	1 staff for 6 children	12
	(1 staff for 5 children	10)**
1 to 2 years	1 staff for 6 children	12
2 to 3 years	1 staff for 10 children	20
3 to 4 years	1 staff for 12 children	24
4 to 5 years	1 staff for 14 children	28
5 to 7 years	1 staff for 15 children	30
7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (for full day of care)	30

* Maximum Group Size is applicable only to Type I facilities.
** This provision shall become effective July 1, 1994. However, the effective date may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1994, contingent upon the availability of additional federal funds for subsidized child care.

(a) In a Type I facility a group shall be separately maintained in a defined area unique to the group with specific staff assigned to and responsible for the group.

(b) The age of the youngest child in the group shall determine the staff-child ratio and maximum group size, if applicable.

(c) If the director's own or related preschool children or preschool children of day care staff receive care in the facility, they shall be included in the staff-child ratio.

(2) Each facility shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect while the children are under the supervision of employees of the facility. The program shall include procedures to inform facility employees of the laws of the Commonwealth pertaining to child abuse or neglect as specified under KRS Chapter 620.

(3) The facility shall provide a planned program of activities geared to the individual needs and developmental levels of the children served. These activities shall provide experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and provide:

(a) A variety of creative activities which may include the following:
1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building; and
7. Tactile activities.

(b) Indoor or outdoor play in which the children make use of both small and large muscles.

(c) A balance of active and quiet play, including group and individual activities, both indoors and outdoors.

(d) Opportunities for a child to have some free choice of activities and to play apart from the group at times, if the child desires.

(e) Opportunities to practice self-help procedures in respect to clothing, toileting, handwashing, and feeding.

(f) Activity areas, equipment, and materials so arranged that the child's activities are visible to the supervising staff.

(g) Regularity of routines to afford the child the security of knowing what is coming next.

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(i) No long waiting periods between activities or prolonged periods during which children stand or sit.

(j) Television viewing by children shall be limited to program related areas.

(4) If school-age care is provided:

(a) A separate area or room shall be provided in a Type I facility.

(b) A child shall be provided a snack after school.

(c) Separate toilet facilities shall be provided for males and females, or a plan implemented to use the same facilities at separate times.

(5) If nighttime care is provided:

(a) A child shall not be permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period or day. If school-age children are served, time spent in school shall be included in the sixteen (16) hours limit.

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room.

(c) If children are present for extended periods of time during their waking hours, the facility shall provide a program of well-balanced and constructive activities geared to the age levels and developmental needs of the children served.

(d) Children sleeping three (3) hours or more shall sleep in pajamas or nightgowns.

(e) School children shall be offered breakfast if they go to school from the facility.

(f) Staff shall:

1. In Type I facilities remain awake while on duty.

2. In Type II facilities remain awake until every child in care is asleep.

Section 2. Health needs of the child shall be met as follows:

(1) First aid supplies shall be available to provide prompt and proper first aid treatment and stored out of reach of children. Supplies shall be periodically inventoried to ensure that they are current. Reusable items shall be sanitized and maintained in a sanitary manner. First aid supplies shall include:

(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape;
(e) Scissors;
(f) Tweezers;
(g) Thermometers;
(h) Flashlight;
(i) Cold pack;

(j) First aid book;

(k) Disposable latex gloves; and

(l) Ipecac syrup (to be given under direction of a licensed physician or the poison control center).

(2) A child showing signs of an illness that may be communicable to others in a day care setting shall not be admitted to the regular child care program. If a child becomes ill during the day, he shall be placed in a supervised area isolated from the rest of the children, the parent or designated person shall be contacted immediately and arrangements shall be made to remove the child from the facility.

(3) Prescription medications shall not be given to a child except as authorized by a licensed physician and with written daily request of the parent or guardian.

(a) The facility shall keep a written record of the administration of each medication, including time, date, amount and staff giving the medication.

(b) Medication shall be stored in a separate (locked) place out of the reach of children and shall be in the original bottle and properly labeled.

(c) Medication shall not be given to a child if the expiration date on the bottle has passed.

(4) Nonprescription medication shall be given to a child only with written daily request of parent or guardian.

(5) Each child shall be helped with personal care and cleanliness.

(6) Children shall not return from the toilet to activities without first washing hands. A child shall wash his hands with soap and warm, running water prior to eating and after toileting.

(7) Staff shall insure that diapering and toilet training shall be a relaxed, pleasant activity. Toilet training shall be coordinated with parent or guardian.

(8) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be available.

(9) Soiled diapers or wet clothing shall be changed promptly and stored in covered containers temporarily and shall be washed or disposed of at least once a day.

(10) When a child is diapered, the child shall be placed on a clean washable surface or disposable covering. Individual washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks unless otherwise prescribed by a physician. If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered. After diapering, staff shall wash their hands and disinfect the surface before diapering another child.

(11) If training chairs are used, they shall be emptied promptly and sanitized after each use.

(12) The infant's formula shall be prepared and provided by the parent. An exception may be made for a facility that participates in the child care food program, or provides formula as a fringe benefit to the parent.

(13) Bottles shall be individually labeled and promptly refrigerated.

(14) A child shall not be fed with a propped bottle.

(15) A child shall have rest periods not to exceed two (2) hours except for infants and toddlers, and time periods during nighttime care and extended hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period.

(16) Drinking water shall be freely available to a child and an individual drinking cup provided if no fountain is provided.

(17) Toilet articles like combs, brushes and toothbrushes used by a child shall be individual and plainly marked.

(18) The facility shall provide and serve nutritious snacks and meals.

(a) A child present at meal or snack times shall be served.

(b) The facility shall provide and serve breakfast or a midmorning snack, lunch, and a midafternoon snack and dinner, if appropriate.

(c) There shall be at least a two (2) hour lapse, but no longer than three (3) hours, between meals or snacks.

(d) Food prepared shall be in quantities reflecting the developmental stage of the child.

(e) Food requirements shall be as follows:

1. Breakfast shall include milk, bread, and fruit or vegetable or juice;

2. Snacks shall include two (2) of the following: milk, protein, fruit or vegetable or juice, or bread; and

3. Lunch and dinner shall include milk, protein, two (2) vegetables or a fruit and one (1) vegetable, and bread.

(f) If parents choose to provide food for their own child's meal or snack, or if food is catered, and the food does not meet the nutritional requirements listed, the facility shall provide additional food necessary to meet these requirements.

(g) A child shall be seated at eating time with sufficient room to manage food and tableware. Adults shall be present with children during eating times.

(h) Individual eating utensils shall be of size and design that a child can handle easily.

(i) Weekly menus shall be prepared, dated and posted in advance in a conspicuous place. Menus shall be kept on file. Substitutions shall be noted on the menu.

Section 3. Health and Sanitation. If the facility does not have a current food service permit issued under the authority of the Department for Health Services, as governed by 902 KAR 45:005, Food Service Code, it shall be in compliance with the requirements of this section.

(1) A facility that serves a meal shall have a three (3) compartment sink or other equipment, and procedures approved by the cabinet, for the purpose of washing and sanitizing dishes, silverware, eating and cooking utensils after use.

(2) Food supplies and protection are to be maintained as follows:

(a) Food shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption. Hermetically sealed, nonacidic and low-acidic food which has been processed in a place other than a commercial food-processing establishment shall not be used. Food served shall be from a source which is in compliance with applicable state and local laws and administrative regulations. Established commercial food stores are an acceptable source.

(b) Food, while being stored, prepared, displayed or served shall be protected against contamination from dust, flies, rodents and other vermin, unclean utensils and work surfaces, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage.

(c) Potentially hazardous food shall, except when being prepared and served, be kept in a safe environment for preservation. The temperature for potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary periods of preparation and service.

(d) Frozen food shall be kept at a temperature of zero degrees Fahrenheit or below so as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures or under cool, potable running water, quick thawed as part of the cooking process, or by another method satisfactory to the health authority.

(e) Each cold-storage facility used for storage of perishable food in a nonfrozen state shall have an indicating thermometer or other appropriate temperature measuring device.

(f) Convenient and suitable sanitized utensils shall be provided and used to minimize handling of food where food is prepared.

(g) Poultry, pork and their products which have not been treated to destroy bacteria, including trichinae, shall be thoroughly cooked. Fruits and vegetables shall be washed before cooking or serving.

(h) Meat salads, poultry salads, and cream filled pastries shall be prepared with utensils which are clean and shall, unless served immediately, be refrigerated pending service.

(i) Food shall be stored in clean racks, shelves or other clean surfaces. Food in nonabsorbent containers may be stored on the floor if it is maintained in an acceptable sanitary condition.

(j) Individual portions of food served to a child shall not be served again. Wrapped food, which is still wholesome and has not been unwrapped, may be reserved.

(k) Poisonous and toxic materials shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food storage, food preparation, and utensil storage areas.

(3) Health and disease controls shall be in place as follows:

(a) If a person who has job duties is known or is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall not perform these duties until such time as the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the provider and the individual involved shall be resolved by the individual's physician or the local health department.

(b) An employee shall maintain personal cleanliness and conform to hygienic practices while on duty. Hands shall be washed thoroughly before starting work, and as often as may be necessary to remove soil and contamination. An employee shall not resume work after visiting the toilet room without first washing his hands.

(c) A facility shall have lavatories located in or immediately adjacent to toilet rooms.

(d) Food contact surfaces of equipment and utensils used in a facility shall be smooth, free of breaks, open seams, cracks, chips, be accessible for cleaning, and nontoxic.

(e) Eating and drinking utensils shall be cleaned for each usage. Kitchenware, food contact surfaces of equipment, exclusive of cooking surfaces of equipment, and food storage utensils used in preparation or serving of food or drink shall be cleaned after each use. Cooking surfaces of equipment shall be kept clean. Nonfood contact surfaces of equipment shall be cleaned to keep them in a clean and sanitary condition. Single-service articles shall be stored, handled, and dispensed in a sanitary manner, and be used only once.

(f) Effective control measures shall be utilized to minimize the presence of rodents, flies, roaches, and other vermin on the premises.

(g) Openings to the outer air shall be effectively protected against the entrance of the insects by self-closing doors, closed windows, screening, controlled air current, or other effective means.

(h) Floors, walls and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows and ceilings shall be kept clean and in good repair.

(i) Kitchens shall be adequately ventilated to the outside air.

(j) The water supply shall be properly located, protected, adequate, and of a source approved by the local health department. Groundwater supplies for facilities caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. Facilities caring for twenty-five (25) children or less may secure approval from the local health department.

(k) Sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles in accordance with local, county and state laws as governed by KRS 211.350 to 211.380. Sewage shall be disposed of by a method approved by the Cabinet for Natural Resources and Environmental Protection or the Cabinet for Human Resources. Consultation shall be sought from the Cabinet for Natural Resources and Environmental Protection or the local sanitarian having jurisdiction over a facility in which the adequacy of the plumbing is questioned.

(l) Each facility shall be provided with adequate and conveniently located toilet and handwashing accommodations.

1. Each toilet shall be kept in clean condition, kept in good repair, be lighted and have ventilation to outside air.

2. A supply of toilet paper shall be available.

3. Lavatories shall have hot and cold running water under pressure which allows washing of hands under warm water.

4. Water temperature at lavatories used for hand washing shall not exceed 110 degrees Fahrenheit.

5. Soap and approved individual cloth or paper towels shall be provided.

6. Easily cleanable, covered waste receptacles shall be available in toilet and handwashing areas.

Section 4. Transportation. (1) There shall be documentation available to indicate conformance to federal and state laws pertaining to vehicles, drivers and insurance as governed by KRS 281.600, 186.020 and Chapters 189 and 189A.

(2) A facility providing or arranging transportation service shall have a written plan and statement of transportation policies and procedures.

(3) Transportation provided by licensed public transportation or school bus shall meet Transportation Cabinet safety inspection requirements.

(4) Requirements for facility-owned vehicles and their usage:

(a) Twelve (12) or more passenger vans and buses shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle used to transport children, and requiring traffic to stop while loading and unloading children at their various homes along public roads, shall be equipped with a system of signal lamps, identifying colors and words.

(c) A car or van shall be equipped with seat belts for each child to be individually secured.

(d) A vehicle used to transport children shall not carry hazardous materials aboard.

(5) The staff-child ratios set forth in Section 1(1) of this administrative regulation shall apply if not inconsistent under special requirements or exceptions in this section. The maximum number of children under the age of five (5) a driver shall supervise alone is four (4).

(6) Each child shall have a seat and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat.

(7) A vehicle containing children shall not be left unattended.

(8) A child shall not be left unattended at the site of aftercare delivery.

(a) If the parent, or a person designated by the parent to accept the child, is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.

(b) If a person other than the designated person is to receive the child, arrangements shall be made by the parent or guardian and documented.

(c) A child shall not be picked up at or delivered to a location which requires crossing the street or highway unless accompanied by an adult.

(9) A vehicle transporting children shall have the headlamps on.

(10) A vehicle shall be refueled when not being used to transport children. If emergency refueling or repair is necessary during transporting, children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(11) The engine shall be turned off, keys removed, and brake set if the driver is not in the driver's seat.

Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.

(a) There shall be a minimum of thirty-five (35) square feet of space per child used for play, exclusive of the kitchen, bathroom, hallways, and storage areas. It shall be kept clean and in good repair.

(b) If a portion of the building is used for purposes other than day care, necessary provisions shall be made to avoid interference with the day care program.

(c) The building shall be so constructed that it is dry, adequately heated, ventilated, lighted; that windows, doors, stoves, heaters, furnaces, pipes, and stairs are protected; that screening is provided on windows and doors which are left open.

(d) There shall be a minimum of one (1) toilet and wash basin for each twenty (20) children. In boys' bathrooms urinals may be substituted for up to one-half (1/2) of the number of toilets required. Toilet facilities shall be cleaned and sanitized daily.

(e) The kitchen shall be clean and equipped for the proper preservation, storage, preparation, and serving of food. The kitchen shall not be used for activities of the children.

(f) The facility shall be equipped with a telephone accessible to the rooms used by the children.

(g) If the only food served by the facility is an afternoon snack for the school-age children, a kitchen shall not be required if adequate refrigeration is available.

(h) Indoor areas for infants and toddlers shall be provided separated from areas used by older children. The infants and toddlers may participate in activities with older children for short periods of time.

(i) There shall be adequate crawling space for infants and toddlers protected from older children and away from general traffic patterns of the facility.

(j) A facility shall have lavatories in or immediately adjacent to changing areas used for infants and toddlers.

(k) If a facility provides an outdoor play area for infants and toddlers, the outdoor area shall be shaded and out of the traffic pattern of older children.

(l) The Department of Housing, Buildings and Construction and the State Fire Marshal's Office shall be contacted concerning planned new buildings, additions, or major renovations prior to construction.

(2) Grounds shall be provided as follows:

(a) On-site outdoor play areas shall be fenced for the safety of the children. Outdoor play areas shall be a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section. The area shall be free from litter, glass, rubbish, and flammable materials. The outdoor area shall be safe and drained; or

(b) If a facility does not have access to an outdoor play area, an indoor space shall be used as a play area and have a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section, and include gross motor equipment and be well-ventilated and heated.

(3) Equipment needed within the facility shall be as follows:

(a) Equipment and furnishings shall be clean and in good repair. There shall be safe play equipment, both indoors and outdoors, to meet the physical and other developmental needs and interests of children of different age groups.

(b) Each facility shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day as specified in Section 1 of this administrative regulation. Toys shall be too large to swallow, durable, and without sharp points or edges.

(c) Tables and chairs shall be of suitable size for children.

(d) There shall be storage space in the form of low open shelves accessible to the children.

(e) Individual space for each child's clothing shall be provided.

(f) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for each child in attendance for more than three and one-half (3 1/2) hours per day. Cribs shall have a firm, comfortable waterproof mattress. For sanitary reasons, individual sheets and covers shall be provided for each child and shall be laundered as needed. If mats are used, floors shall be free from drafts and dampness. Cots and other equipment and furnishings shall be properly spaced so as to allow free and safe movement by children and adults.

(g) Tiered cribs shall not be used.

(h) Supplies shall be stored so that the adult can reach them without leaving the child unattended.

(i) Chairs shall be provided for staff to use when feeding, holding or playing with children.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at 4 p.m.

STATEMENT OF EMERGENCY
905 KAR 2:130E

The purpose of these administrative regulations is to comply with KRS 199.892, which requires the Cabinet for Human Resources to promulgate administrative regulations to establish procedures to cover a range of areas to promote, expand and improve the quality of child care for children in Kentucky. The function of these administrative regulations is to set standards for licensure of child care facilities in the areas of definition of terms, staff qualifications, physical facilities, staff to child ratio, health and sanitation, transportation and special programs. It was necessary to promulgate emergency regulations to close an existing gap in Kentucky's child care licensure review process. These administrative regulations direct the agency to search out and act upon any findings that suggest the possibility that operation of a child care facility could pose a threat to the health and safety of Kentucky's children. The proposed administrative regulations state that any existing licensed child care facility or applications for licensure may be denied, suspended or revoked based on the findings of a state review. The negative action may take place if the child care facility operator or a person working or living at the facility has abused, neglected or exploited a child or adult, or has had a human services center or facility registration, certification, permit or license revoked or denied by the state. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation shall be filed with the Regulations Compiler on or about June 15, 1993.

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

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:130E. Child care discipline.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
EFFECTIVE: June 7, 1993
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care for children. The function of this administrative regulation is to set discipline standards for child day care facilities.

Section 1. Discipline in Child Day Care Facilities. Disciplinary methods shall be in writing and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The facility shall:

(1) Establish simple and consistent rules both for children and staff that set the limits of behavior;

(2) Not subject children to harsh or physical discipline;

(3) Not allow loud, profane, threatening, frightening or abuse language by staff or other persons on the premises; and

(4) Not associate discipline with rest, toileting, or food.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at 4 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee at its June 7, 1993, meeting unless specified otherwise.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

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) "KWSP" means the KHEAA work study program.

(8) [~~(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.

(9) [~~(8)~~] "School term" means the equivalent of one (1) semester, one (1) quarter, or one (1) summer school term.

(10) [~~(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.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:005. Definitions.

RELATES TO: KRS 250.020 to 250.170
STATUTORY AUTHORITY: KRS 250.100, 250.110
NECESSITY AND FUNCTION: To define terms used in the administration of the Kentucky Seed Law and regulations.

Section 1. **Definitions. (1) "Advertised" means all representations that relate to seed, other than those on a label, disseminated in any manner or by any means.**

(2) "Approximate" means that the percentages of purity or germination and noxious weed seeds are within the tolerances established by the "Rules For Testing Seeds".

(3) "Finished plant" means a young plant, grown from a seed or seedling that is being offered for sale for planting in the field.

(4) "Hybrid":

(a) Means the first generation seed of a cross, produced by controlling the pollination and by combining:

1. Two (2) or more inbred lines;

2. One (1) inbred, or a single cross, with an open-pollinated variety; or

3. Two (2) varieties or species, excluding open-pollinated varieties of corn (Zea mays); and

(b) Excludes the second or subsequent generations from the crosses specified in subparagraphs 1 through 3 of this paragraph.

(5) "Kind" means one (1) or more related species or subspecies that singly or collectively is known by one (1) common name.

(6) "Lot" means a definite quantity of seed:

(a) Identified by a lot number or other mark;

(b) Every portion or bag of which is:

1. Uniform; and

2. Within recognized tolerances for the factors that appear in the label.

(7) "Seedling" means a young plant:

(a) Grown from seed; and

(b) Offered for sale for:

1. Transplanting purposes; or

2. Planting in the field.

(8) "Variety" means a subdivision of a kind that can be differentiated from other plants of the same kind by:

(a) Growth;

(b) Yield;

(c) Plant;

(d) Fruit;

(e) Seed; or

(f) Other characteristics.

(9) "Wholesaler" means a person whose predominant business is to supply seed to other distributors.

Section 2. Incorporation By Reference. (1) "Rules For Testing Seeds", Vol. 12, No. 3, 1988 (containing 1989, 1990, 1991 revisions), Journal of Seed Technology, Association of Official Seed Analysts, is incorporated by reference.

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

(a) At the Kentucky Agriculture Experiment Station, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275;

(b) Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

~~[Terms used in the administration of the seed law and regulations and not otherwise defined shall have the following meaning:~~

~~(1) The term "lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within recognized tolerances, for the factors which appear in the labeling.~~

~~(2) The term "kind" means one (1) or more related species or subspecies which singly or collectively is known by one (1) common name, for example, tall fescue, oats, red clover, and timothy.~~

~~(3) The term "variety" means a subdivision of a kind which is characterized by growth, yield, plant, fruit, seed or other characteristics, by which it can be differentiated from other plants of the same kind, for example, Compact oats, Kenland red clover, and Clair timothy.~~

~~(4) The term "hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:~~

~~(a) Two (2) or more inbred lines.~~

~~(b) One (1) inbred or a single cross with an open pollinated variety.~~

~~(c) Two (2) varieties or species, except open pollinated varieties of corn (Zea mays). The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.~~

~~(5) The term "advertised" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this act.~~

~~(6) The term "approximate" as used in the Kentucky Seed Law shall mean within the applicable tolerances of the "Rules for Testing Seeds" of the Association of Official Seed Analysts published in 1970 and as subsequently amended by the Association of Official Seed Analysts [Analysis].~~

~~(7) The term "seedling" means a young plant, grown from seed, which is being offered for sale for transplanting purposes or for planting in the field.~~

~~(8) The term "finished plant" means a young plant, grown from a seed or seedling which is being offered for sale for planting in the field.]~~

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:010. Sampling, analyzing, ~~[and]~~ testing, and ~~[,]~~ tolerances.

RELATES TO: KRS **250.090, 250.130** ~~[250.020 to 250.170]~~
STATUTORY AUTHORITY: KRS 250.100, **250.130**
NECESSITY AND FUNCTION: To prescribe the methods of sampling, analyzing, and testing seed, and the tolerances to be applied in the administration of the Kentucky Seed Law and regulations.

Section 1. **The methods of sampling, anlayzing, testing and examining seed, and the tolerances to be applied in the administration of KRS 250.090 and 250.130 shall be those established in "Rules For Testing Seeds".**

Section 2. Incorporation By Reference. (1) "Rules For Testing Seeds", Vol. 12, No. 3, 1988 (containing 1989, 1990, 1991 revisions), Journal of Seed Technology, Association of Official Seed Analysts, is incorporated by reference.

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

(a) At the Kentucky Agriculture Experiment Station, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275;

(b) Monday through Friday, 8 a.m. to 4:30 p.m.

~~[The methods of sampling, analyzing, testing and examining seed, and the tolerances to be applied in the administration of the Kentucky Seed Law and regulations shall be the same, except as otherwise stead, as prescribed in the current "Rules for Testing Seeds" of the Association of Official Seed Analysts, published in 1970 and as subsequently amended by the Association of Official Seed Analysts [Analysis].]~~

Section 3. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed amendment to this administrative regulation shall be held on Tuesday, February 23, 1993, at 9 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed amendment to this administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Wilbur W. Frye, Director, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dan Niffenegger

(1) Type and number of entities affected: This is an editorial change. It corrects a mistake that exists in the present regulations. All who are covered by the law benefit from the removal of errors, inconsistencies or unclear wording.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to leave a mistake in the official regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The law applies equally to all.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:025. Maximum weed seed content permitted.

RELATES TO: KRS **250.010(7), 250.100** [~~250.020 to 250.170~~]
STATUTORY AUTHORITY: KRS 250.100
NECESSITY AND FUNCTION: To establish the maximum amount of weed seed that may be present in agricultural seed sold in Kentucky.

Section 1. [~~No~~] Agricultural seed[~~, except Striate lespedeza, Korean lespedeza, and mixtures of same,~~] containing more than two (2) percent weed seed by weight, including noxious-weed seed, shall **not** be sold, exposed, or offered for sale in Kentucky [~~unless special permission has been granted by the director. Striate lespedeza, Korean lespedeza, and mixtures of same may contain three (3) percent weed seed, including noxious weed seed~~].

[~~Section 2. Seed containing weed seed in excess of two (2) percent by weight (three (3) percent for Striate lespedeza, Korean lespedeza, and mixtures of same) including noxious weed seed, shall carry a special label or tag as prescribed by the director.~~]

Section 2. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:060. Manner of labeling seed, seedlings, or finished plants. [~~Labeling of seed distributed to wholesalers.~~]

RELATES TO: KRS 250.020 to 250.170
STATUTORY AUTHORITY: KRS **250.040** [~~250.100~~]
NECESSITY AND FUNCTION: To prescribe the manner of labeling seed, seedlings, and finished plants distributed to wholesalers, retailers, and consumers.

Section 1. (1) After seed has been processed it **shall** [~~must~~] be labeled before distribution to any person, including a wholesaler. Each bag or bulk lot **shall** [~~must~~] be completely labeled when supplied to a retailer or consumer. Labeling of seed supplied to or owned by a wholesaler [~~(one whose predominant business is to supply seed to other distributors rather than to consumers of seed)~~] may be by a key tag or laboratory report accompanying the invoice, provided each bag or other container is clearly identified by a lot number stenciled on the container[~~, or if the seed is in bulk~~]. Each bag or container that is not so identified **shall** [~~must~~] carry complete labeling.

(2) Tobacco seedlings or finished plants distributed to any person, including a wholesaler, **shall** [~~must~~] be labeled in the manner prescribed by Kentucky Seed Improvement Association regulations.

Section 2. Incorporation By Reference. (1) "Kentucky Tobacco Seedling Certification Regulations", Kentucky Seed Improvement Association, Inc. is incorporated by reference.
(2) This document may be inspected, copied, or obtained:
(a) At the Kentucky Agriculture Experiment Station, Regulatory Services Division, 101 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275;
(b) Monday through Friday, 8 a.m. to 4:30 p.m.

Section 3. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:065. Lawn, turf mixtures; labeling.

RELATES TO: KRS **250.040, 250.100** [~~250.020 to 250.170~~]
STATUTORY AUTHORITY: KRS **250.040(1),** 250.100
NECESSITY AND FUNCTION: To provide uniformity in labeling lawn and turf seed mixtures and to prescribe the label format for lawn and turf seed mixtures.

Section 1. **Tall Fescue and Orchard grass seed mixtures, other seed mixtures, and seed of a single species sold in bags that are printed as if the seed was a mixture, shall be labeled as follows:**
(1) If seed is sold in a printed bag, the information on the bag shall be the same as the information on the tag.
(2) For seed of a lot that is put into printed bags before the exact analysis is known:
(a) Seed mixtures sold in a bag printed with the words, "Kentucky 31 TALL FESCUE", shall have:
1. A seed tag attached to the bag, that complies with applicable statutes and administrative regulations;
2. The words, "AND ORCHARD GRASS MIXTURE", shall be applied by stencil on:
a. The bag; or
b. A label that is attached to the front (broad) side of the bag.
3. Lettering that is:
a. At least one (1) inch high; and
b. Located no more than three (3) inches from the "Kentucky 31 TALL FESCUE" letters.
4. For a bag on which "Kentucky 31 TALL FESCUE" is printed on the back (broad) side:
a. The words, "AND ORCHARD GRASS MIXTURE" shall be printed on the back (broad) side of the bag; and
b. Alteration of the sides of the bag shall not be required.
[~~The label for seed mixtures for lawn and/or turf purposes in containers of more than one (1) ounce shall bear thereon:~~
~~(1) The word "mixed" or "mixture."~~
~~(2) The headings "fine textured grasses" and "coarse kinds" and thereunder in tabular form in type no larger than the heading:~~
~~(a) Commonly accepted name, in order of its predominance, of the kind, or kind and variety of each agricultural seed present in excess of five (5) percent of the whole and determined to be a "fine textured grass" or a "coarse kind" in accordance with the classification under this regulation.~~
~~(b) The term "none" or "none claimed" shall be printed under the appropriate heading "fine textured grass" or "coarse kinds" in the absence of an appropriate entry.~~
~~(c) For each agricultural seed named under paragraph (a) of this [the] subsection: the percentage by weight of pure seed; the percentage of germination exclusive of hard seed; the percentage of hard seed, if present; and the calendar month and year the germination tests were completed.~~

~~(3) The heading "other ingredients" and thereunder in conspicuous type no larger than the heading:~~

~~(a) The percentage by weight of all weed seeds.~~

~~(b) The percentage by weight of all agricultural seed other than those listed on the label as "fine textured grasses" or "coarse kinds."~~

~~(c) The percentage by weight of inert matter.~~

~~(4) The name and number per pound of each kind of noxious weed seed present.~~

~~(5) The name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within Kentucky.~~

~~(6) Lot number, or other identification.~~

~~Section 2. For purposes of labeling lawn and/or turf seed mixtures, "fine textured grasses" shall include those kinds of varieties approved as "fine textured grasses" by the Association of American Seed Control Officials at the Biennial Conference of said Association in 1961 and as subsequently amended by said Association after approval of the Joint Legislative Committee of AASCO, ASTA, AOSA, and AOSCA. All kinds or varieties not so designated as "fine textured grasses" must be listed under the heading "coarse kinds." A list of the "fine textured grasses" and "coarse kinds" may be obtained from the director or his agent.~~

~~Section 3. Tall Fescue - Orchardgrass Mixtures. (1) It is best for fescue - orchardgrass mixtures to sold in plain, unmarked bags with only a label for identification. Sometimes, however, seed of a lot is put into printed bags before the exact analysis is known. If mixtures are sold in bags printed with the words "Kentucky 31 Tall Fescue", seed tags attached to the bags must comply with the law in all respects. In addition, the words "AND ORCHARDGRASS MIXTURE" must be applied by stencil or on labels attached to the front (broad) side of the bag. Letters must be legible, at least one (1) inch high, and located no more than three (3) inches from the bottom of the "Kentucky 31 TALL FESCUE" letters to ensure that the buyer is aware that he or she is purchasing a mixture. If "Kentucky 31 TALL FESCUE" letters are printed on the back (broad side of the bag, then "AND ORCHARDGRASS MIXTURE" letters must be placed there as well. It is not necessary to alter the sides of the bag.~~

~~(2) Whenever seed is sold in printed bags, information on the bag must be in agreement with information on the tag. Although described in detail here for tall fescue/orchardgrass mixtures, the same principle applies to all mixtures and to seed of a single species being sold in bags printed as if the seed was a mixture.]~~

Section 2. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:075. Types of labeling; tag label form.

RELATES TO: KRS **250.040, 250.070, 250.080, 250.100** [~~250.020 to 250.170~~]
STATUTORY AUTHORITY: KRS **250.040, 250.070, 250.080, 250.100** [~~250.100~~]
NECESSITY AND FUNCTION: To prescribe the types of labeling and the tag and label forms to be used in labeling seed.

Section 1. **(1) Seed sold, exposed or offered for sale, in bulk or in containers of one (1) pound or more, shall be labeled as follows:**

(a) Printing the information required by statute or administrative regulation directly on the container;

(b) Attaching a tag, on which is printed the information required by statute or administrative regulation;

(c) Attaching one (1) of the following Division of Regulatory Services labels:

1. Tag "A", manila, for use on unmixed alfalfas, clovers, and grasses;

2. Tag "B", yellow, for use on cereal, garden, and truck crop seed, including seed potatoes; or

3. Tag "C", for use on seed mixtures.

(2)(a) Items specified in subsection (1)(a) and (b) of this section shall be provided by the person labeling the seed, after he has received a permit.

(b) The tags specified in subsection (1)(c) of this section shall be obtained from the Division of Regulatory Services of the Kentucky Agricultural Experiment Station. [~~The requirements for labeling seed sold, exposed or offered for sale in the Commonwealth of Kentucky shall be accomplished by use of one (1) of the following types of labels:~~

~~(1) Printing the required information directly on the container. Such printing or label to be provided by the person labeling the seed after applying for and receipt of a permit.~~

~~(2) A tag, containing the required information, attached to the containers. Such tags to be provided by the person labeling the seed after applying for and receipt of a permit.~~

~~(3) A label containing the required information in the form of a tag [or gummed label] provided by the Division of Regulatory Services of the Kentucky Agricultural Experiment Station. These tags [labels] are made in three (3) forms. Form "A" is manila. It is to be used on unmixed alfalfas, clovers, and grasses. Form "B" is yellow. It is to be used on cereal, garden, and truck crop seed, including seed potatoes. Form "C" is green. It is to be used on seed mixtures.~~] [~~A gummed label is for use on tobacco seed (except Kentucky certified).~~]

Section 2. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
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KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:080. Use of own tags; permit, report.

RELATES TO: KRS 250.020 to 250.170
STATUTORY AUTHORITY: KRS 250.100
NECESSITY AND FUNCTION: To prescribe the method for obtaining a permit to use own tags or labels in lieu of official Kentucky tags, for obtaining a permit to transport tobacco seedlings or finished plants into Kentucky, and to provide the means of payment of inspection fee.

Section 1. **Permits Required. (1)(a) In lieu of tags, labels, or stamps purchased from the director, a person who distributes agricultural or vegetable seeds may apply to the director for a permit to:**

1. Use his own labeling; and

2. Report the quantity of seed sold under his own labeling.

(b) Application shall be made on "Application For Permit For User To Provide Own Labels For Agricultural Seeds And Mixtures Of Agricultural Seeds Sold" form.

(c) A person who has been granted a permit under the provisions of this subsection shall pay the labeling and inspection fee determined on the basis of the:

1. Report of quantity of seed sold that has been submitted to the director; and

2. Fee schedule established in Section 2 of this administrative regulation.

(2)(a) A person who wishes to transport tobacco seedlings or finished tobacco plants into the Commonwealth of Kentucky shall apply to the director for a permit to:

1. Transport tobacco seedlings or finished tobacco plants into the Commonwealth of Kentucky; and

2. Report the quantity of tobacco seedlings or finished tobacco plants sold.

(b) A person who has been granted a permit under the provisions of this subsection shall pay the labeling and fee on the basis of:

1. The report of the quantity of tobacco seedlings or finished tobacco plants sold that has been submitted to the director; and

2. Fee schedule established in Section 2 of this administrative regulation. [~~Any person who distributes agricultural or vegetable seeds in the Commonwealth of Kentucky may apply to the director for a permit to use his own labeling, to report the quantity of seed sold and to pay the labeling and inspection fee on the basis of said report in lieu of tags, labels, or stamps purchased from the director. Any person who transports tobacco seedlings or finished plants from outside the Commonwealth of Kentucky into Kentucky must apply to the director for a permit to do so. Permit holders must report the quantity of tobacco seedlings or finished plants sold, and pay the labeling and inspection fee on the basis of said report.~~]

Section 2. The inspection fee paid by [~~such~~] permit holders shall be in accordance with the following schedule:

(1) Packages one (1) pound in weight and up to and including twenty-five (25) pounds in weight:

(a) Alfalfa, clovers, and grasses (including mixtures): four (4) cents per package;

(b) All other seeds: two (2) cents per package.

(2) Packages in excess of twenty-five (25) pounds in weight but not exceeding 100 pounds:

(a) Alfalfa, clovers, and grasses (including mixtures):

1. Packages twenty-six (26) to fifty (50) pounds in weight: eight (8) cents per package.

2. Packages fifty-one (51) to seventy-five (75) pounds in weight: ten (10) cents per package.

3. Packages seventy-six (76) to 100 pounds in weight: twelve (12) cents per package.

(b) All other seeds:

1. Packages twenty-six (26) to fifty (50) pounds in weight: four (4) cents per package.

2. Packages fifty-one (51) to seventy-five (75) pounds in weight: six (6) cents per package.

3. Packages seventy-six (76) to 100 pounds in weight: eight (8) cents per package.

(3) Packages in excess of 100 pounds and seed distributed in bulk: [~~Pounds distributed in bulk and in packages in excess of 100 pounds:~~]

(a) Alfalfa, clovers, and grasses (including mixtures): twelve (12) cents per cwt.

(b) All other seeds: eight (8) cents per cwt.

(4) Tobacco. Packages of tobacco seed one-twelfth (1/12) ounce in weight and more (except Kentucky certified): two (2) cents per package.

(5) Tobacco seedlings or finished plants. Tobacco seedlings or finished plants (except those certified in Kentucky) sold or delivered in Kentucky on or after March 1, 1993: twenty-five (25) cents per thousand seedlings.

Section **3.** [~~2.~~] In making application for said permit the distributor shall agree to:

(1) Label the seed, tobacco seedlings, or finished plants with the information required by KRS 250.040 and **administrative** regulations promulgated by the director.

(2) Keep **the following records:**

(a) Invoices;

(b) Shipping documents;

(c) Bill of lading and ledger records that show, for each incoming seed lot, the:

1. Name and address of the supplier;

2. Date received;

3. Number of containers;

4. Weight of each container; and

5. Cost of the seed;

(d) For each outgoing seed lost, the:

1. Name and address of the consignee;

2. Date shipped;

3. Number of containers;

4. Weight of each container; and

5. Amount to be paid by consignee;

(e) Test reports; and

(f) The basis for labeling, such as suppliers labels. [~~such records as the director may consider necessary to indicate accurately the number and size of containers of each kind of agricultural and vegetable seed distributed, and the quantity of such seeds distributed in bulk, and the number of tobacco seedlings or finished plants distributed.~~]

(3) Grant the director or his authorized representative permission to examine such records and verify the statement of quantity of seeds, tobacco seedlings or finished tobacco plants distributed.

(4) Report to the director on **the "Seed Quarterly Report" form, and the "Tobacco Seedling Annual Report" form,** [~~forms furnished by the director~~] the quantity of agricultural and vegetable seeds, and of tobacco seedlings or finished plants sold during the period covered.

Section **4.** [~~3.~~] [~~The director may grant the permit if he determines that such a report of agricultural and vegetable seeds, and tobacco seedlings or finished plants will lead to efficient enforcement of the act.~~] The report of sales shall be due and the inspection fees payable quarterly, on the 10th day of the month following the end of the quarter.

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

(a) "Application For Permit For User To Provide Own Labels For Agricultural Seeds And Mixtures Of Agricultural Seeds Sold (RS-64-01b)";

(b) "Seed Quarterly Report (RS-65-02b)"; and

(c) "Application for Permit for Out-of-state User to Sell Tobacco Seedlings in Kentucky".

(2) These documents may be inspected, obtained, or copied:

(a) At the Kentucky Agricultural Experiment Station, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275;

(b) 8 a.m. to 4:30 p.m., Monday through Friday.

Section 6. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

KENTUCKY AGRICULTURAL EXPERIMENT STATION
(As Amended)

12 KAR 1:090. Stop sale orders.

RELATES TO: KRS **250.120, 250.130, 250.160** [~~250.020 to 250.170~~]
STATUTORY AUTHORITY: KRS 250.100**, 250.120, 250.130, 250.160**
NECESSITY AND FUNCTION: To provide for a means of administrative action in the form of a "Stop Sale Order" against seed, tobacco seedlings, or finished tobacco plants found by analysis, test, examination, or representation to be in violation of the Kentucky Seed Law and regulations.

Section 1. A written, printed, or verbal (followed by a written or printed) stop sale order may be issued on any lot of seed or tobacco seedlings or finished plants found by analysis, test or examination, or upon examination of the label or other graphic or printed representations, or the director or his agent has reasonable cause to believe a lot of seed, tobacco seedlings or finished tobacco plants to be in violation of the Kentucky Seed Law and regulations pertaining thereto. Seed under a stop sale order may not be sold, exposed or offered for sale and may not be moved from the point where the stop sale was issued, until requirements of the Kentucky Seed Law and regulations have been met [~~complied with~~] and a release has been issued by the director or his agent. Because of their perishable nature, tobacco seedlings or finished plants under a stop sale order may be returned to the vendor before a final release has been obtained from the director.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Notice of Violation and Stop Sale (RS-30-5c)"; and
(b) "Notice of Violation (RS-TOB-93A)".
(2) These documents may be inspected, obtained, or copied:
(a) At the Kentucky Agricultural Experiment Station, Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, KY 40546-0275;
(b) 8 a.m. to 4:30 p.m., Monday through Friday.

Section 3. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

C. ORAN LITTLE, Dean and Director
APPROVED BY AGENCY: January 13, 1993
FILED WITH LRC: January 14, 1993 at 1 p.m.

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:050. Conciliation.

RELATES TO: KRS 121.140
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a conciliation procedure as required by KRS 121.140. It is necessary to promulgate this administrative regulation to enable the registry to comply with Acts 1992, Chapter 288, Section 46, 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 **exempted by KRS 61.878(1)**; 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.

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

32 KAR 2:060. Advisory opinions.

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

regulation is necessary to implement the process through which advisory opinions may be requested and issued.

Section 1. Requests for Advisory Opinions. (1) A 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 **a per-page charge of ten (10) cents per page plus postage.** [~~subscription at a fee of twenty (20) dollars, renewable annually.~~] Persons wishing to **obtain a copy of an** [~~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.

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

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, **special,** and regular election.

Section 2. **A** [~~No~~] candidate, campaign committee, or contributing organization**, or a person acting on their behalf, shall not** [~~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.

DEPARTMENT OF STATE
Registry of Election Finance
(As Amended)

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.

Section 3. A candidate appearing on the ballot in a regular election who has signed either exemption form for that election may exercise the reversion rights provided in Section 1 of this administrative regulation if an independent candidate files to run against him in that election. A candidate covered by this section who desires to exercise a different exemption option shall comply with the deadline for revocation provided in Section 2 of this administrative regulation.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: March 17, 1993
FILED WITH LRC: April 14, 1993 at 11 a.m.

REVENUE CABINET
Department of Administrative Services
(As Amended)

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

RELATES TO: KRS 132.370**(4), (5)**
STATUTORY AUTHORITY: KRS **61.810(1)(f)** [~~13A.100~~], **131.030(1),(2), 131.130(1),** 132.370(4),(5)
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. **Definitions. (1) "Cabinet" is defined by KRS 132.010(1).**
(2) "PVA" means a property valuation administrator.
(3) "Secretary" means the Secretary of the Revenue Cabinet.

Section 2. Notice of Intent to Remove. **(1) If** [~~When~~] the **secretary has determined that** [~~Revenue Cabinet believes~~] a PVA should be removed from office pursuant to KRS 132.370**(4), he shall notify** the PVA [~~shall be notified~~] in writing of the **secretary's** [~~Revenue Cabinet's~~] intent to remove him.
(2) The notice shall**:**
(a) State the**:**
1. Specific reasons for removal including the specific activity**;**
2. Act; or
3. Omission [~~on which the intent to remove is based~~]**;**
(b) [~~. The notice shall~~] Advise the PVA of **his** [~~the PVA's~~] right to a preremoval conference and a postremoval hearing**;** and
(c) [~~shall~~] Explain the time limits and procedures to be followed in **the** [~~that~~] conference and hearing.

Section **3.** [~~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 **in writing** a conference with the Secretary [~~of the Revenue Cabinet~~] or his [~~or her~~] designee to answer the charges.
(2) 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~~].
(3) [~~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.
(4) If [~~In the event~~] a preremoval conference is not timely requested, the [~~Revenue~~] cabinet shall notify the PVA in writing of the**:**
(a) Effective date of removal;
(b) [~~the~~] Specific reason for removal; and
(c) Advise the PVA of the opportunity for a postremoval evidentiary hearing in accordance with subsection **(6)** [~~(3)~~] of this section.
(5) [~~(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.
(6) [~~(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.
(7) If the secretary or his [~~or her~~] designee determines the PVA shall be removed, the PVA shall be notified in writing of the**:**
(a) Effective date of removal**;**
(b) Specific reason for the removal, including the specific:
1. Activity;
2. Act; or
3. Omission;
(c) PVA's right to request in writing:
1. Within ten (10) days after receipt of the notice of removal;
2. A postremoval hearing before the cabinet. [~~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.~~]
(8)(a) [~~(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.
(b) A hearing may be continued or rescheduled**:**
1. By agreement of the parties; or
2. Upon motion of a party supported by a showing of good cause.
(9)(a) [~~(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 **upon which his** [~~underlying this~~] removal **is based**.

(b) The secretary may[~~, without conducting further proceedings or making findings of fact or conclusions of law,~~] issue a decision making the removal final **without:**

1. Conducting further proceedings; or

2. Making findings of fact or conclusions of law.

Section **4.** [~~3.~~] Postremoval Hearing. [~~(1)~~] Hearing officer. **(1)(a)** **A** postremoval hearing shall be conducted before one (1) or more hearing officers to be appointed by the Secretary of the Revenue Cabinet.

(b) A [~~The~~] hearing officer shall be **a** full-time employee of the [~~Revenue~~] cabinet who **has** [~~have~~] had no involvement in the investigation of or decision to bring the charges resulting in the PVA's removal.

(c) If [~~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.

(a) The presiding hearing officer shall have **the** [~~full~~] authority to**:**

1. Control the procedure of a hearing;

2. [~~, to~~] Admit or exclude testimony or other evidence; and

3. [~~to~~] Rule upon [~~all~~] motions and objections.

(b) The presiding hearing officer shall**:**

1. Fully inquire into all the facts at issue; and

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

(c) The presiding hearing officer may**:**

1. Call and examine witnesses;

2. Direct the production of papers or documents; and

3. Admit this proof into the record of the proceedings.

(3) Procedure.

(a) **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**:**

1. Cross-examine **cabinet** [~~these~~] witnesses; and

2. [~~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) **Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.**

(d) The rules of privilege shall be given effect.

(e) The following may be stated orally:

1. Motions made during a hearing;

2. Objections to the conduct of a hearing; and

3. Objections to the introduction of evidence. [~~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.~~]

(f) A [~~(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**:**

1. Contrary to law;

2. Disruptive; or

3. Otherwise improper.

(g) A [~~(e) All~~] postremoval hearing shall be private**,** unless the accused PVA requests a public hearing.

(h) [~~(f)~~] The record of the proceedings before the hearing officer shall consist of**:**

1. The transcript of the testimony taken at the hearing;

2. The exhibits offered in evidence**;**

3. [~~, any~~] Written applications, orders and motions made by the parties**;**

4. [~~, any~~] Interlocutory orders or rulings made by the hearing officer; and

5. The hearing officer's recommended findings of fact, **and** conclusions of law.

(i) [~~(g) Upon completion of both sides of the case and~~] Within thirty (30) days of the **completion of the** hearing, the hearing officer shall render**:**

1. Written recommended findings of fact**;**

2. Conclusions of law; and

3. An order **that shall** [~~to~~] be served upon the parties and the secretary of the [~~Revenue~~] cabinet.

(j) [~~(h)~~] The secretary of the [~~Revenue~~] cabinet**:**

1. May accept or reject the recommended decision of the hearing officer; and

2. Shall notify the PVA in writing of **his** [~~this~~] decision.

(k) The [~~This~~] decision **of the secretary** shall**:**

1. Constitute the final decision of the secretary of the [~~Revenue~~] cabinet; and

2. [~~shall~~] Be made part of the record of the proceedings conducted by the hearing officer.

[~~Section 4. Judicial Review. As provided by KRS 132.370(5), the PVA shall have the right to appeal the final decision of the Secretary of the Revenue Cabinet to a circuit court of an adjacent judicial circuit.~~]

KIM BURSE, Secretary
APPROVED BY AGENCY: March 8, 1993
FILED WITH LRC: March 11, 1993 at 2 p.m.

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority
(As Amended)

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.270(1)** [~~224A.070(1)~~] requires the Kentucky Infrastructure Authority to administer the solid waste revolving fund and KRS **224A.270(6)** [~~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 1. 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:

(1) "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 **Waste** [~~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) "Private activity loan" shall mean any loan five (5) percent or more of which the proceeds of which are used directly or indirectly in a private trade or business within the meaning of section 141 of the Internal Revenue Code of 1986, as amended.

(10) [~~(9)~~] "Solid waste revolving fund" shall mean the solid waste revolving fund established by KRS 224A.270.

(11) [~~(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)**(a) Except on private activity loans, the** 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.

(b) The interest rate on private activity loans shall be paid at an annual rate equal to the index rate less two and three-quarters (2.75) 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 **5.** [~~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 **loan** **[~~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 **6.** **[~~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 **7.** **[~~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.

KENTUCKY WORKERS' COMPENSATION FUNDING COMMISSION
(As Amended)

200 KAR 19:010. Payment of audit expenses by taxpayer.

RELATES TO: KRS **[~~Chapter~~]** 342**.1231(6)**
STATUTORY AUTHORITY: KRS **[~~Chapter 13A~~]**, 342.1223**(2)(g), (3)(f), 342.1231(6)**
NECESSITY AND FUNCTION: KRS 342.1223(2)(g) requires the Kentucky Workers' Compensation Funding Commission to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. KRS 342.1231(6) requires that all expenses incurred by the Kentucky Workers' Compensation Funding Commission in conducting audits shall be paid in accordance with administrative regulations promulgated by the Kentucky Workers' Compensation Fund Commission. In addition to identifying those audit expenses that shall be paid by taxpayers, this administrative regulation specifies the manner in which audit expenses will be billed to taxpayers and paid by them. This administrative regulation also specifies the procedure by which taxpayers may protest audit expenses billed to them.

Section 1. Definitions. (1) The definition of "taxpayer" is governed by KRS 342.1231(7).

(2) "KWCFC" means the Kentucky Workers' Compensation Funding Commission.

Section 2. **(1)** All necessary and reasonable expenses incurred by the KWCFC in conducting an audit shall be reimbursed to the KWCFC by the taxpayer audited.

(2) Expenses to be reimbursed shall include the **following** costs of:

(a)1. Meals;
2. Lodging;
3. Transportation;
4. Parking;
5. Incidentals, such as:
a. Paper;
b. Fax;
c. Phone calls;
d. Baggage claims;
e. Tolls;
f. Tips; and
g. Valet services, when necessary; and
(b) Labor spent on audits, including time spent:
1. In advance preparation for the audit;
2. On travel;
3. Finalizing the audit; and
4. Preparing written reports and correspondence to the taxpayer. **[~~meals, lodging, transportation, parking, incidentals (such as paper, fax, phone calls, baggage claims, tolls, tips and valet services when necessary) and the actual and total cost of all labor spent on the audits including time spent in advance preparation for the audit, time spent on travel, time spent on finalizing the audit and time spent on preparing written reports and correspondence to the taxpayer.~~]**

Section 3. **(1)** KWCFC employees shall be reimbursed for all out-of-pocket expenses they incur while conducting audits.

(2) Except for air transportation, meals and mileage, expenses shall be reimbursed at actual cost to employees.

(3) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.

(4) Meals shall be reimbursed at actual cost not to exceed forty-five (45) dollars per day.

(5) Mileage for the use of privately owned auto shall be reimbursed at the rate of twenty-two (22) cents per mile.

Section 4. Summarized bills consisting of totals for "labor", "travel" and "all other" expenses **shall** **[~~will~~]** be submitted to the taxpayer as soon as practicable after completion of the audit. Itemized bills **shall** **[~~will~~]** be available upon request. The taxpayer shall pay the bill for audit expenses within thirty (30) days of receipt of the summarized bills. In order to protest the bill or portion thereof, the taxpayer **shall** **[~~must~~]** pay the bill in full and file a written protest within thirty (30) days of receipt of the summarized bill. All protests under this section shall be governed by the procedures set out in KRS 342.1231.

WIN E. HILL, Chairman
APPROVED BY AGENCY: February 2, 1993

FILED WITH LRC: February 5, 1993 at noon

GENERAL GOVERNMENT CABINET
Board of Registration for
Professional Engineers and Land Surveyors
(As Amended)

201 KAR 18:180. Firm registration.

RELATES TO: KRS 322.060
STATUTORY AUTHORITY: KRS 322.060, 322.070, 322.290
NECESSITY AND FUNCTION: KRS 322.060 authorizes the registration of engineering corporations, partnerships and firms doing business in **Kentucky. This** [~~this Commonwealth. These~~] administrative regulation **establishes the requirements for registration.** [~~are intended to outline these procedures not defined in KRS 322.060.~~]

Section 1. **(1) An application for a permit to practice engineering shall be made on "Application for Permit to Practice Engineering".**

(2) An application for a permit to practice engineering that is not made on the "Application for Permit to Practice Engineering" form shall not be accepted by the board.

(3) An applicant may attach additional sheets to the "Application For Permit to Practice Engineering" form if:

(a) They are required in order to provide required information;

(b) Are the same size as the "Application for Permit to Practice Engineering" form; and

(c) Are securely attached to the "Application for Permit to Practice Engineering" form. [~~Applications. Applications for permits to practice engineering shall be made on forms provided by the board. Applications made on other than the applicable forms will not be accepted for filing by the board. Applicants may attach additional sheets to the form if necessary for other evidence, but such attached sheets shall conform to the same size as the printed forms and shall be securely attached. The board may require clarification or expansion of any of the information on the application in order to evaluate fully the applicants' qualifications.~~]

Section 2. Fees. **(1)** [~~The fee for an~~] Initial permit of a corporation, partnership, or firm to practice engineering**:** [~~in this Commonwealth shall be~~] $200.

(2) Renewal of [~~a permit to practice~~] engineering **permit:** [~~shall require the payment of~~] $100 [~~to be paid prior to the renewal of said permit~~].

(3) If the fee for a permit, or a renewal of a permit, shall not be granted until the appicable fee has been paid.

[~~Section 3. Licensing Certificates. Corporations, partnerships or firms permitted to do business shall be issued a "permit", renewable annually upon payment of the renewal fee and compliance with all other provisions of this act and these administrative regulations.~~]

Section 3. Permits shall be serially numbered in the order in which they are approved.

Section 4. (1) After June 30, 1993, a firm, corporation, or partnership shall not practice engineering, unless it has been granted a permit by the board.

(2) An application for initial permit shall be available from the board, beginning January 1, 1993.

(3) The board shall accept an application for an initial permit until June 30, 1993.

(4) An initial permit, that is approved between January 1, 1993 and June 30, 1993, shall remain in effect through June 30, 1994.

(5)(a) A permit may be renewed for a one (2) year period.

(b) Each one (1) year renewal period shall:

1. Begin July 1; and

2. End the following June 30.

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

(a) "Application for Permit to Practice Engineering (1993)"; and

(b) "Certificate (1993)".

(2) This material may be inspected, copied, or obtained at the Board of Registration for Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, KY 40601, 7:30 a.m. to 5 p.m., Monday through Friday.

[~~Section 4. Serial Numbers. Permits, serially numbered in the order in which approved shall be issued to successful applicants.~~

~~Section 5. Effective Dates. Applications for permits shall be available from the board office effective January 1, 1993. Applications for initial permits under this act and these regulations shall be accepted by the board until June 30, 1993. Applications approved during this time period will be in effect for the 1993-1994 fiscal year. After July 1, 1993, no firm, corporation partnership desiring to practice or offer to practice engineering in this Commonwealth shall do so without first securing a permit from this board. Renewals shall be on a yearly cycle July 1 through June 30. Renewal forms shall be mailed to permit holders one (1) month prior to the expiration date of the permit.~~

~~Section 6. Permit application, 1993 edition and permit certificate, 1993 edition are incorporated herein by reference and are available for inspection at the board office, 160 Democrat Drive, Frankfort, Kentucky 40601.~~]

GEORGE M. ELY, JR., Chairman
APPROVED BY AGENCY: October 27, 1992
FILED WITH LRC: December 14, 1992 at 2 p.m.

GENERAL GOVERNMENT CABINET
Board of Registration for
Professional Engineers and Land Surveyors
(As Amended)

201 KAR 18:190. Continuing professional development. [~~education.~~]

RELATES TO: KRS 322.290(h)
STATUTORY AUTHORITY: KRS 322.290(h)
NECESSITY AND FUNCTION: **This administrative regulation implements the continuing professional development program mandated by KRS 322.290(2)(h) for land surveyors.** [~~In order to safeguard life, health, property, and to promote the public welfare, the practice of Professional Land Surveying in Kentucky requires continuing education in accordance with KRS 322.290(h) and this administrative regulation.~~]

Section 1. Definitions. (1) "Continuing professional development" means continuing education activities that meet the requirements established by the provisions of this administrative regulation.

(2) "Professional development hour" means fifty (50) minutes of instruction or presentation that meets the requirements of th provisions of this administrative regulation for continuing education courses.

(3) "Registrant" means a land surveyor as defined by KRS 322.010(6).

Section 2. Required Number of Professional Development Hours. (1) Except as provided in subsections (3) and (4) of this section, a professional land surveyor shall complete eight (8) professional development hours each calendar year.

(2)(a) A professional land surveyor shall complete:

1. Two (2) professional development hours on the standards of practice at a seminar sponsored by the board; and

2. Two (2) professional development hours on professional ethics for land surveyors at a seminar approved by the board.

(b) The professional development hours required by this subsection shall be completed every four (4) years.

(3) Four (4) hours in excess of the eight (8) professional development hours required to be earned in a calendar year may be carried forward to the next calendar year.

(4) During the period January 1, 1991 through December 31, 1994, the required number of professional development hours that shall be completed by a professional land surveyor shall be:

Renewal Date of Registration	Registrant Group	Period	Required Hours of Professional Development
7/1/93	A-K	1/91-12/92	0
7/1/94	L-Z	1/93-12/93	8
7/1/95	A-K	1/93-12/94	16

Section 3. Criteria for Professional Development. (1) Professional development requirements may be met by:

(a) Successful completion of:

1. College or university courses; or

2. Courses that are approved for professional development;

(b) Attending approved:

1. Seminars;

2. Short courses;

3. Tutorials;

4. In-house programs sponsored by corporations or other organizations;

(c) Completion of approved:

1. Tutorials;

2. Correspondence courses;

3. Televised or videotaped courses;

(d) Teaching or instructing courses, programs, or items specified in paragraphs (a) through (c) of this subsection;

(e) Making or attending approved presentations at technical or professional meetings; or

(f) Publication of papers, articles, or books related to the practice of land surveying.

(2) Activities described in subsection (1) of this section shall:

(a) Be relevant to the practice of land surveying;

(b) Contain technical, ethical, or managerial subjects; and

(c) Be offered for the number of professional development credit hours approved by the board.

(3) For each year during which professional development hours are required to be earned, credit shall be given only for one (1) presentation, teaching, program, or course on a particular topic.

(4) In any calendar year, credit shall not be given for a course that is identical to a course for which credit was granted in the previous two (2) calendar years.

(5) Professional development programs, courses, presentations, and other offerings shall:

(a) Be well organized and presented sequentially; and

(b) Presented by persons who are qualified by:

1. Education; and

2. Experience.

(6) Registration.

(a) Registration of participants by the sponsor of a course, program, seminar, presentation, or other activity shall be made on a form that shall include the items specified in paragraphs (b) through (d) of this subsection.

(b) Participants':

1. Name;

2. Address; and

3. Registration number;

(c) Activity's:

1. Type;

2. Location;

3. Duration;

4. Instructor; and

5. Professional development hours; and

(d) Sponsor's:

1. Name; and

2. Location;

(e) A participant shall be given a copy of the form required by the provisions of this section;

(f) A registrant shall retain his copy of the form required by the provisions of this section for a period of four (4) years;

(g) The board may require a registrant to submit this form to it for verification of attendance.

Section 4. Credit for Professional Development. (1) Conversion of professional development units from other education units shall be made as follows:

Other Education Units	Professional Development Hours
1 university semester hour	15
1 university quarter hour	10
1 continuing education unit	10

(2) Credit for papers, articles, or books shall:

(a) Be claimed after publication; and

(b) Not exceed the lesser of:

1. Preparation time; or

2. Twenty-five (25) professional development hours per paper, article, or book.

(3) A teacher, instructor, or presenter at an approved course, seminar, or presentation may claim credit at twice the number of hours permitted participants.

(4) Credits for courses not specified in subsection (1) of this section shall be earned at the rate of one (1) professional development hour for each hour of instruction completed.

Section 5. Approval of Continuing Professional Development Course. (1)(a) Prior to offering a continuing professional development course, a sponsor shall obtain board approval of the course.

(b) A sponsor shall submit "Continuing Professional Development Course Approval Form".

(2)(a) A registrant may submit for credit completion of a course for which a sponsor had not received prior approval from the board.

(b) If the board determines that the course meets the requirements for continuing professional development established by the provisions of this administrative regulation, credit for the course may be granted by the board for:

1. College courses;

2. Continuing professional development courses;

3. Courses taken out of Kentucky; and

4. Other professional development or continuing education courses.

Section 6. Exemptions. Subject to board review and approval of requests and supporting documentation, the following registrants may be exempted from continuing education requirements:

(1) A registrant wishing to be exempted under the provisions of this section shall submit documentation supporting the basis upon which the request for exemption is made.

(2) A registrant shall be exempted for the calendar year in which he is initially registered by the board.

(3) A noncareer military registrant is exempted for the calendar year in which he serves:

(a) On active duty in the armed forces of the United States:

(b) For a period exceeding 120 consecutive days.

(4) A registrant shall be exempt for the calendar year in which he:

(a) Is employed as a professional land surveyor; and

(b) Assigned to duty outside the United States for a period exceeding 120 consecutive days.

(5) A registrant who cannot complete the continuing professional development requirement because of physical disability, illness, or other extenuating circumstance may be exempt for the calendar year in which the disability, illness, or other extenuating circumstance occurs.

Section 7. Reinstatement. (1) Prior to reinstatement, a registrant who applies for reinstatement after his registration has expired, or has been revoked or suspended by the board, shall earn the continuing professional development hours that were required for each year of the:

(a) Revocation;

(b) Suspension; or

(c) Expiration.

(2) If the board has imposed conditions for reinstatement, including the earning of a number of professional development hours, a registrant shall also:

(a) Earn the number of professional development hours; and

(b) Meet the other board conditions for reinstatement.

(3) The number of professional development hours that may be required under this section shall not exceed the number of continuing professional development hours that were required for the four (4) year period prior to reinstatement.

Section 8. Reciprocity. Professional development requirements shall be deemed to have been met if:

(1) A registrant resides in another state;

(2) The state has been approved by the board as a state with acceptable continuing professional development requirements; and

(3) The registrant certifies on the "Continuing Professional Development Form (Form CPD-1)" that the professional development and other registration requirements imposed by the state have been met.

Section 9. Forms. (1) Prior to filing an application for renewal of registration, an applicant shall have filed a "Continuing Professional Development Form (Form CPD-1)".

(2) The form shall be filed by January 15 of his renewal year.

(3) The "Continuing Professional Development Form" shall be:

(a) Signed by the registrant; and

(b) Affixed with the registrant's seal.

Section 10. Audits. (1) In each renewal period, the board shall audit at least five (5) percent of registrants who renew their registration.

(2) The board shall audit a registrant who fails to file a "Continuing Professional Development Form" by January 15 of his renewal period.

(3) By April 1 of a registrant's renewal year, a registrant shall be notified in writing of a disallowance of professional development credit, or of a deficiency in the registrant's completion of the requirements for continuing professional development.

(4) The board shall audit a registrant as part of a disciplinary review of the registrant.

Section 11. Disallowance. If the board disallows continuing professional development credit pursuant to an audit, a registrant shall, within 120 days from the date of receipt of notification of disallowance:

(1) Substantiate the disallowed continuing professional development credit; or

(2) Earn sufficient additional credit to meet the minimum credit requirement.

Section 12. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Continuing Professional Development Form (Form CPD-1) (6/93)";

(b) "Continuing Professional Development Course Approval Form (revised 5/93)".

(2) They may be inspected, copied, or obtained at the Kentucky State Board of Registration For Professional Engineers and Land Surveyors, 160 Democrat Drive, Frankfort, KY 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

[~~Section 1. (1) Scope. Continuing education obtained by a registrant should maintain, improve or expand skills and knowledge obtained prior to initial licensure or develop new and relevant skills and knowledge.~~

~~(2) Definitions. Terms used in this section are defined as follows:~~

~~(a) Continuing education - continuing education as referred to in KRS 322.290(h) shall hereinafter be referred to as continuing professional development.~~

~~(b) Professional development hour (PDH) - a contact (clock) hour consisting of not less than fifty (50) minutes of instruction or presentation and which further meets the requirements of this administrative regulation.~~

~~(c) Sponsor - an individual, organization, association, institution or other entity which provides a board approved activity for the purpose of fulfilling the continuing professional development requirements of this administrative regulation.~~

~~(d) Board - the Kentucky Board of Registration for Professional Engineers and Land Surveyors, the legal state entity having jurisdiction to register individuals to practice the profession of land surveying and to discipline those registrants who violate the applicable laws or administrative regulations promulgated by the board.~~

~~(e) Registrant - a person or individual registered as a professional land surveyor by this board.~~

~~(3) Requirements. To demonstrate that a professional land surveyor maintains an acceptable level of competency, a registrant must obtain the number of professional development hours (PDHs) per year as shown below. This requirement must be satisfied during the period from January 1 through December 31 except for the carry over permitted and outlined hereinafter.~~

~~(a) A registrant licensed as a professional land surveyor must earn a minimum of eight (8) PDH per year except for the carry over permitted. The number of professional development hours which may be carried forward into the next year shall not exceed one half (1/2) of the annual requirement.~~

~~(b) A professional land surveyor is required to earn a minimum of two (2) PDH credits by attending a board sponsored seminar on the~~

standards of practice and two (2) PDH credits by attending a board approved seminar on professional ethics for land surveyors at least every four (4) years.

(4) Implementation schedule.

Renewal Date	Registrant Group	Continuing Development Period	Required PDHs
7/1/93	A K	1/91 to 12/92	0
7/1/94	L Z	1/93 to 12/93	8
7/1/95	A K	1/93 to 12/94	16

(5) Activities. Continuing professional development activities which satisfy the requirements shall include, but not be limited to:

(a) Successfully completing college or university courses;

(b) Successfully completing courses which are awarded continuing education units (CEUs);

(c) Attending seminars or short courses;

(d) Attending or using tutorials, correspondence courses, televised courses or videotaped courses;

(e) Attending in house programs sponsored by corporations or other organizations;

(f) Teaching or instructing as described in paragraphs (a) through (e) of this subsection;

(g) Authorizing published papers, articles, or books;

(h) Making presentations at technical or professional meetings;

(i) Attending program presentations at related technical or professional meetings.

All such activities as described in paragraphs (a) through (i) of this subsection must be relevant to the practice of land surveying and must contain technical, ethical, or managerial content. All such activities as described in paragraphs (c) through (i) of this subsection must have board approval of the number of PDHs awarded. Repetitive teaching and/or repetitive presentation of the same material will not satisfy this requirement; credit will only be allowed for the first presentation of such material.

(6) Criteria. Continuing professional development activities must meet the following criteria:

(a) The content of each presentation is well organized and presented in a sequential manner.

(b) The presentation will be made by persons who are well qualified by education or experience.

(c) There is a provision for individual participant registration which will include information required for recordkeeping and reporting.

(7) Units. The conversion of PDH units from other units is as follows:

1 University semester hour of credit . . . . . 15 PDHs
1 University quarter hour of credit . . . . . 10 PDHs
1 Continuing Education Unit (CEU) . . . . . 10 PDHs
1 Hour of acceptable professional development activity . . . . . 1 PDH

(8) Credits. Professional development hours of credit for qualifying courses successfully completed which offer semester hour, quarter hour, or CEU credit are as specified above. All other activities permit the earning of one (1) PDH of credit for each contact hour with the following exceptions:

(a) Teaching or instructing qualifying courses or seminars or making presentations at technical or professional meetings can earn PDH credit at twice that of participants.

(b) Authorship of papers, articles, or books cannot be claimed until actually published. Credit earned will equal preparation time spent not to exceed twenty five (25) PDH per publication.

(c) The board does not encourage meeting the professional development requirements through correspondence courses. Correspondence course PDH may be acceptable; however, the registrant should submit supporting documentation to demonstrate high quality education from the course.

(9) Exemptions. A registrant may be exempt from the professional development requirements for one (1) of the following reasons:

(a) New registrants by way of examination or reciprocity shall be exempt for the calendar year in which they become registered by this board.

(b) A noncareer military registrant serving on active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year may be exempt from obtaining the professional development hours required during that year.

(c) A registrant employed as a professional land surveyor and assigned to duty outside the United States for a period of time exceeding 120 consecutive days in a calendar year shall be exempt from obtaining the professional development hours required during that year.

(d) Registrants affected by physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(e) Registrants who apply for reinstatement after allowing their registration to expire or having had their registration revoked or suspended must earn the required professional development hours for each inactive year, in addition to any other terms and conditions which were mandated by the board at the time of said revocation or suspension, not to exceed the annual professional development requirement for four (4) years prior to reinstatement being granted; this requirement shall be in addition to such other conditions of reinstatement as are provided within KRS Chapter 322 and 201 KAR Chapter 18.

(10) Reciprocity. Continuing professional development requirements may be met without completing the entire renewal form if a registrant resides in another state or jurisdiction which is listed by the Kentucky board as having continuing professional development requirements acceptable to the Kentucky board and the registrant certifies in the appropriate section that all continuing professional development and registration requirements for that state or jurisdiction have been met.

(11) Forms. All renewal applications will require the completion and prefiling of a continuing professional development form specified by the board outlining the PDH credit claimed. The required form must be completed and returned to the board office by January 15 of the same year as the registrant's renewal date. The registrant must supply sufficient detail on the form to permit audit verification and must sign and seal the certification on the continuing professional development form.

(12) Records. Maintaining records which can be used to support credits claimed is the responsibility of the registrant. Records required include, but are not limited to:

(a) A log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned;

(b) Attendance verification records in the form of completion certificates, signed attendance receipts, paid receipts, a copy of a listing of attendees signed by a person in responsible charge, or other documents supporting evidence of attendance. These records must be maintained for a period of four (4) years and copies must be furnished to the board for audit verification purposes if requested.

(13) Audit. The board shall audit at least five (5) percent of the registrants responding in each renewal period. Additionally, the board shall audit all those registrants who fail to file the required certification forms by January 15 of the year of the registrant's renewal. The audits will be conducted by the board and notice of any disallowance or deficiency will be forwarded to the registrant by April 1. In addition, the board shall audit individual registrants as a part of all disciplinary reviews of said registrant.

(14) Disallowance. If the board disallows claimed PDH credit, pursuant to an audit, the registrant shall have 120 days after

~~notification of the deficiency to substantiate the original claim or to earn other credit to meet the minimum requirement.~~

~~(15) Failure to comply. If the registrant fails to furnish the required continuing professional development form, properly completed and signed, or fails to furnish copies of the supporting records pursuant to a board audit, the right to practice as a registered professional land surveyor in the Commonwealth of Kentucky shall expire on the registrant's next renewal date. If the registrant fails to correct any deficiency of the required professional development hours within the grace period granted by the board pursuant to an audit, the right to practice as a registered professional land surveyor in the Commonwealth of Kentucky may be revoked or suspended.~~

~~(16) Incorporation by reference. Continuing professional development forms are herein incorporated by reference and made a part hereof.~~]

GEORGE M. ELY, JR., Chairman
APPROVED BY AGENCY: October 27, 1992
FILED WITH LRC: December 14, 1992 at 2 p.m.

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

GENERAL GOVERNMENT CABINET
Kentucky Athletic Commission
(As Amended)

201 KAR 27:012. Wrestling requirements.

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

Section 1. The wrestling ring shall:
(1) Be clean, sanitary and free from grit, dirt, resin, or other foreign substances;
(2) Be no smaller than sixteen (16) feet by sixteen (16) feet and shall have no fewer than three (3) ropes; and
(3) Have an area of at least six (6) feet between the edge of the ring and the first row of spectator chairs on all four (4) sides of the ring. Some type of fencing, ropes, or other barricade may be used to separate this area from the spectators.

Section 2. Before the beginning of a wrestling show, all changes or substitutions in the advertised program of wrestling shall be posted at the ticket window and at the entrance to the facility. Changes or substitutions shall also be announced in the ring before commencement of the first match along with the information that any ticket holder desiring a refund based on those announced changes or substitutions shall be entitled to receive a refund before commencement of the program. Purchasers of tickets shall be entitled, upon request by them, to a refund of the purchase price of such tickets, if the request is made before the commencement of the first match.

Section 3. Licensed wrestlers who have made a commitment to participate in a professional match and are unable to participate, for any reason, shall notify the promoter of their inability to participate at the earliest possible moment. Failure to notify the promoter in a timely manner shall constitute grounds for possible disciplinary action by the commission.

Section 4. When participating in a match a wrestler shall:
(1) Have his fingernails trimmed well below the tips of the fingers;
(2) Be dressed in clean attire which is in good taste;
(3) Be personally clean and neat in appearance; and
(4) Wear soft soled shoes or no shoes.

Section 5. The following provisions shall relate to wrestling "falls":
(1) Both shoulders pinned to the canvas for the referee's count of three (3) shall constitute a fall. Flying and rolling falls shall not count;
(2) Conceding a fall, or quitting because of having received punishment from a legitimate hold, constitutes a fall; and
(3) The referee shall not place his hands under the shoulders of a contestant unless necessary to determine a fall.

Section 6. When a wrestling contestant rolls off the canvas and outside the ropes, he shall be ordered to return to the middle of the ring to resume the contest. If a contestant fails to obey the referee's order to return to the ring before the referee's count of ten (10) he shall be counted out and the decision awarded to his opponent.

Section 7. **(1) In the conduct of a wrestling match, a contestant shall:**
(a) Use only legitimate holds or methods known to wrestling;
(b) Refrain from grasping or hanging onto clothing, ring or ropes for support or to gain a competitive advantage; or
(c) Break within a count of three (3), when ordered to do so by the referee.
(2) Any violation of the provisions of subsection (1) of this section may result in disqualification of a contestant, at the discretion of the referee. Flagrant violation which results in injury to another contestant may result in suspension or revocation of a contestant's license, at the discretion of the commission. [~~The following shall relate to wrestling holds:~~
~~(1) Any legitimate holds or methods known to wrestling may be used by the contestant but no deliberate slugging, strangling, gouging, biting, kicking, hair pulling, spitting, or scratching shall be permitted;~~
~~(2) No contestant shall be permitted to grasp or hang onto clothing, ring, or ropes for support during the progress of a contest; and~~
~~(3) When a referee orders the contestants to break, they must do so within a count of three (3).~~]

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

KENTUCKY REAL ESTATE APPRAISERS BOARD
(As Amended)

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.

(3) A person who conducted or participated in an investigation of the subject matter of a hearing, shall not serve as a hearing officer.

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.

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

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 **4** ~~[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, Rowar. 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 muzzleloading 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 **Managed Deer Hunt Application form, dated June, 1993, which is hereby incorporated by reference. Copies shall be available to the public, including copying and inspection, by contacting the Wildlife Division offices at #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except holidays, or by contacting local conservation officers or hunting license vendors.** ~~[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 **when** 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.

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

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 **completing a Crop Damage Complaint Form (G-43), dated March 1993, which is hereby incorporated by reference. Copies shall be available to the public, including copying and inspection, by contacting the Wildlife Division offices at #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except holidays, or by contacting local conservation officers.** **[~~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.

TOURISM CABINET
Department Of Fish And Wildlife Resources
(As Amended)

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 **located in Ohio and Muhlenberg Counties**. 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) **Any** **[~~No~~]** person 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 **not** be required to have an area use permit of any kind.

(2) **Any** **[~~No~~]** person enroute through the area on state or county owned roads shall **not** be required to have an area use permit.

(3) **Any** **[~~No~~]** person who **is** **[~~are~~]** on the area for reasons of employment or in the protection of public safety or well-being shall **not** 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 **individual or event application** form **dated April 1993,** and according to the instructions provided. The application **forms are** **[~~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 **and** **[~~or~~]** businesses located in Hopkins, McLean, Butler, Daviess, Muhlenburg **and** **[~~or~~]** Ohio counties. In order to be an issuing agent, **each** **[~~they~~]** shall meet the following criteria:

(a) County clerks shall complete an issuing agent agreement **form dated April, 1993**, 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 **dated April, 1993**, 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 **Peabody Permit Vendor** report forms **dated May 23, 1993 and** 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.

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Jobs Development Authority
(As Amended)

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 **include** ~~[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 **include** ~~[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) **and (4);**
(c) A list of the competitors of the applicant in the Commonwealth;
(d) **Notice that a $500 nonrefundable application fee payable to the authority shall be submitted with the application;**
(e) A breif history of the business and description of the project including description of service or technology acitivies;
(f) A letter of support from the appropriate local elected officials, including an acknowledgment that the local community is supportive of the job assessment incentive;
(g) Notice that an administrative fee of one-tenth (.1) of one (1) percent of the estimated approved costs for the entire period, with a minimum administrative fee of $1,000 in addition to the $500 application fee, is payable upon execution of the service and technology agreement. If the approved costs, as finally determined, are adjusted upward, the administrative fee shall be increased to include the increase;
(h) Projected costs and a breakdown of those costs, including:
1. Annual rent of the building or the fair rental value if the building is being purchased;
2. Start-up costs:
a. Cost of furnishing and equipping the building for ordinary business functions;
b. Computer;
c. Nonrecurring costs of fixed telecommunication equipment;
d. Furnishing;
e. Office equipment; and
f. Relocation costs;
(i) For the ten (10) year period of the financial assistance:
1. The annual estimated wages to be paid;
2. The annual wage assessment; and
3. The annual income tax credit;
(j) The current number of jobs at the project location, both full time and part time;
(k) The increase in the number of full-time and part-time jobs at the project location after an eighteen (18) month period;
(l) The total number of full-time and part-time jobs projected two (2) years after project completion;
(m) The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the projects. ~~[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 appoint a hearing agent and hold at least one (1) public hearing to solicit public comments and at the hearing the company shall address**

the criteria in KRS 154.24-090. [~~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 154.24-**150** [~~120~~]. Before any service and technology agreement [~~as prescribed in KRS 154.24-120~~] shall become effective, **the requirements of KRS 154.24-150 shall be met. Prior consent of the authority shall be required for any service benefit or in-kind contribution proposed to be offered by** the legislative body of the local jurisdiction **pursuant to KRS 154.24-150(2).** [~~, 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. **The authority may require the following additional information as a part of the negotiated terms of a service and technology agreement pursuant to KRS 154.24-120** [~~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 **assure** compliance with KRS 154.24-090(1), 154.24-120(2)(b) and 154.24-140(4);

(3) Annual certifications **of** [~~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" **and the form of "Application" referred to in subsection (1) of this section** 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.

CABINET FOR ECONOMIC DEVELOPMENT
Kentucky Industrial Revitalization Authority
(As Amended)

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 **(i)** [~~(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. As a part of this needs analysis the eligible company shall provide to the authority, the company's:

1. Financial history;

2. Support in the community, including the support of the local developmental authority or chamber of commerce; and

3. Projected cost of the project, including:

a. Building improvements;

b. Equipment purchase or upgrade;
c. Machinery purchase or upgrade;
d. Additional inventory required; and
e. Additional personnel required;

(b) The specific projected amount and timing of capital investment by the eligible company that will result in financial stability for the manufacturing facility of the eligible company. The authority shall, as a part of its analysis of projected amount and timing of capital investment review the information and documentation provided in the application pursuant to paragraph (a)3 of this subsection;

(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. As a part of its analysis pursuant to this paragraph the authority shall consider the following information:

1. The current number of jobs at the project location, both full time and part time;

2. The increase in the number of full-time and part-time jobs at the project location after an eighteen (18) month period;

3. The total number of full-time and part-time jobs projected two (2) years after project completion;

4. The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the project; and

5. The number of full-time and part-time jobs retained by the project;

(d) Evidence, based upon the financial information provided pursuant to this section, 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 detailed description of the company's productivity, efficiency and financial stability as required by KRS 154.26-080(4);

(f) A list of alternatives to closing the manufacturing facility available to the eligible company pursuant to KRS 154.26-080(4);

(g) Copies of the eligible company's financial statements for the most current fiscal year end;

(h) The lending source for the project; and

(i) Notice that a $500 nonrefundable application fee payable to the authority shall be submitted with the application; [~~The application shall contain the following information:~~

~~(a) The eligible company's need for the economic revitaliza tion 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 and at the hearing the consultant referred to in KRS 154.26-080 shall address the standards in KRS 154.26-080.** [~~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. **The authority may require the following additional information as a part of the negotiated terms of a revitalization agreement pursuant to KRS 154.26-090:** [~~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 **form of** 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.

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

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 **KRS 224A.270(7) and** Section 2 **[~~and 4~~]** of this administrative regulation.

Section 4. **Submission to the Kentucky Infrastructure Authority.** **[~~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.

KENTUCKY PAROLE BOARD
(As Amended)

501 KAR 1:040. Conducting parole revocation hearings.

RELATES TO: KRS 439.315, 439.330(1)(e), 439.341, 439.390, 439.430, 439.440
STATUTORY AUTHORITY: KRS 439.340(3)
NECESSITY AND FUNCTION: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole and the issuance of warrants **[~~by the board~~]**.

Section 1. Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at such hearings. The hearings shall be conducted in accordance with applicable state and federal law and in accordance with these administrative regulations.

(1) Charges of parole violation **shall be** **[~~are~~]** initiated by a parole officer of the Department of Corrections **[~~Cabinet~~]** by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, provided a finding is made that the substantial rights of the parolee will not be prejudiced by the amendment. A continu-

ance of the proceeding may be granted in the event of such amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of such objection.

(2) Pursuant to SCR 3.700 Sub. rule 3, in the absence of an attorney to represent the Department of Corrections [~~Cabinet~~], Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections [~~Cabinet~~] in matters relating to the revocation of probation or parole.

(3) No hearing shall be conducted within five (5) [~~ten (10)~~] days of the service of the notice of preliminary hearing. The parolee may however, waive this waiting period. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including but not limited to electronically, mechanically or stenographically. However, the record of the proceedings need not be transcribed, unless so requested by the Parole Board. [~~With the approval of the Parole Board, and subject to any conditions the board may stipulate, these hearings may be conducted by telecommunications or any other similar or related method.~~]

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including, but not limited to the conditions of parole, and all other matter which may be judicially noticed in the courts of this Commonwealth. Witnesses appearing at the preliminary hearing to give testimony **shall** [~~must~~] do so under oath, administered by the administrative law judge, and will be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation, except for those elements which are in the nature of affirmative defenses. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings will be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition, however, such evidence will be subject to rebuttal by the parole officer.

(6) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing. If probable cause is found to exist, the case shall then be referred to the Chairman of the Parole Board who shall then issue a parole violation warrant which will cause the parolee to be brought before the Parole Board for a final parole revocation hearing. Notwithstanding a finding of probable cause, [~~for their decision on whether a parole violation warrant should be issued, except that,~~] upon agreement by all parties, leniency may be granted in any form deemed appropriate by the administrative law judge and upon agreement by the parolee to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

(7) In cases where the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Chairman of the Parole Board for [~~board for their decision on~~] the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. [~~whether the warrant should be issued and the parolee returned for further proceedings.~~] This recommendation shall be advisory only and shall not be binding on the board. In the event that the administrative law judge recommends that a parolee not be returned as a parole violator, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant. This referral **may** [~~will~~] be made at the discretion of the administrative law judge **and** [~~but~~] shall be made only when the administrative law judge finds that there exists substantial mitigating factors or there exists a viable alternative to reincarceration.

(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) In those cases in which the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, no cases will be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this section shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires, and may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel. Except however, chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel, may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, are prohibited from considering matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

[~~(12) If a parolee allegedly has emotional problems, a written report must be received as to the emotional stability or state of the parolee prior to the preliminary revocation hearing.~~]

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing in the event the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

(4) The parolee shall be permitted legal representation at the good cause hearing.

(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.

(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.

(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.

(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.

(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.

Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) Upon referral of a case to the Chairman of the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the chairman shall issue the parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman the warrant may be issued by any board member who has been designated, in writing, by the chairman to act in his behalf in such matters, or issued with the signature of four (4) board members.

(2) Upon referral of a case to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, such referral being made pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue such warrant.

(3) In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Chairman of the Parole Board may, upon sworn affidavit of the supervising parole officer, swearing that some violation has occurred, issue a parole violation warrant. No vote of the board is necessary. In the absence or disability of the chairman such warrants may be issued by majority vote of the board and the signature of four (4) board members shall be sufficient to issue such warrant. If no quorum of the board is present, a board member who has been designated, in writing, by the chairman to act in his behalf in such matters may issue such warrant.

(4) In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has occurred. Upon the vote of the board to issue the warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue a warrant.

(5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. Upon the vote of the board to issue any such warrant, the warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signature of four (4) board members shall be sufficient to issue a warrant.

(6) The board may, in its discretion, decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (3) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(7) In any case where a vote of the board is required to issue a parole violation warrant, in the event there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, the chairman, or a board member designated by the chairman, in writing, to act in his behalf in such matters, is authorized to issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If the chairman, or his designee, issues a parole violation warrant under such circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chairman or his designee. [~~Parole Violation Warrants. Upon referral of a case by the administrative law judge to the Parole Board for further revocation consideration, or the issuance of a warrant, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. Such warrant shall be issued by the chairman, except that in the absence or disability of the chairman, the signatures of four (4) board members shall be sufficient to issue a warrant. In the event there is no quorum of the board present to concur that probable cause exists, the chairman is authorized to issue a parole violation warrant if he, upon review, concurs that probable cause exists to issue said warrant. If the chairman issues a parole violation warrant in the absence of a quorum of the board, the board shall vote, as soon as is reasonable on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the chairman.~~]

Section 4. Absconding. [~~In cases where it appears that a parolee has absconded from parole supervision, it otherwise appears that the parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Parole Board may, upon sworn affidavit of the supervising parole officer swearing that said violation has occurred, issue a warrant for the arrest of the parolee. In cases where the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued based upon an unsworn written report from the supervising state setting forth facts sufficient to conclude that there is reasonable grounds to believe that a violation of parole has occurred.~~] Except in those cases where a preliminary parole revocation hearing is held by the supervising state in the case of a parolee being supervised in another state, upon apprehension or return to the state of Kentucky of a parolee for whom a parole violation warrant has been issued without a preliminary revocation hearing, such hearing shall then be [~~, a preliminary parole revocation hearing is~~] conducted as set forth elsewhere in Section 1 of this administrative regulation, except that if the administrative law judge finds that there is probable cause to believe that any violations set forth in the warrant have been committed by the parolee and that the warrant, as to any or all charges contained within it, was validly issued, the parolee must be ordered returned to the appropriate institution of the Kentucky Department of Corrections [~~Cabinet~~] for further consideration by the Parole Board except as set forth elsewhere within this section. In the event no probable cause is shown, the case must be referred to the Chairman of the Parole Board who must then withdraw the warrant, returning the parolee to supervision. Notwithstanding a finding of probable cause, the administrative law judge may, upon motion of the parole officer, or upon finding there are overwhelming mitigation factors present, not known to the board at the time the warrant was issued, refer the case back to the Parole Board for a decision as to whether the warrant should be exercised or withdrawn. This referral back to the board may include a recommendation from the administrative law judge that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board. If the warrant is withdrawn the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose. If the warrant is ordered exercised, the parolee shall be

ordered returned to the appropriate institution.

Section 5. Waiver of Preliminary Parole Revocation Hearings. Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed forms which shall be submitted to the board or its administrative law judge for approval. Such waivers may be accepted within the discretion of the board or its administrative law judges. No wavier will be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter will proceed in the same manner as after a hearing before an administrative law judge.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings will be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee will have the charges, specified in the warrant, explained to him and he will be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to be represented by legal counsel and wishes to present witnesses on his behalf, he **shall** **[~~must~~]** request a special hearing. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee **shall** **[~~must~~]** occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings will be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, where either the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of a witness or production of documents, the board will issue them pursuant to KRS 439.390, providing no claims for expenses incurred by these witnesses will be submitted to the board, as it has no authorization to pay such expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

(a) The parolee, parole officer and all witnesses shall be sworn in by the Parole Board.

(b) The board will present a short statement of the charges against the parolee.

(c) The parole officer will present proof to substantiate the charges, subject to cross-examination by the parolee.

(d) The parolee will present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.

(e) The parole officer may put on any rebuttal proof subject to cross-examination.

(f) The board may question both the parolee and the parole officer as well as any witnesses.

(g) The board will then make a determination as to whether the parolee has violated his parole.

(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board will receive proof from the parolee in mitigation of the violation subject to cross-examination.

(i) The board will then make a determination as to the disposition of the case and the parolee is either notified in person immediately or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive such hearings shall execute the prescribed form and submit it to the board. Acceptance of such waiver will be totally within the discretion of the board and only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for elsewhere in this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole will be made by the majority vote of the board without any further proceedings.

JOHN C. RUNDA, Chairman
APPROVED BY AGENCY: March 8, 1993
FILED WITH LRC: March 8, 1993 at 3 p.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Support Services
(As Amended)

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 **required for [~~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 **during school hours** 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. **The** [~~Such~~] record shall be maintained throughout the pupil's attendance. **The** [~~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. **The** [~~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

EDUCATION PROFESSIONAL STANDARDS BOARD
(As Amended)

704 KAR 20:198. Director of special education.

RELATES TO: KRS 157.250, 161.020[~~, 161.025~~], 161.030
STATUTORY AUTHORITY: KRS 157.250, 161.020, 161.028, [~~156.070,~~] 161.030
NECESSITY AND FUNCTION: KRS 161.020[~~, 161.025, and 161.030~~] requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board [~~Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education~~]; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established [~~recommended~~] by the Education Professional Standards Board [~~council and approved by the state board~~]. This administrative regulation establishes (1) the director of special education [~~an appropriate~~] certificate, (2) the program approval standards for the preparation-certification program for directors of special education, and (3) identifies acceptable certificates for individuals who may serve in a position which supervises, directs, administers, or coordinates special education programs. [~~which shall also be valid for the position of teacher consultant for special education, and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation Certification of Professional School Personnel.~~

~~Section 1. (1) The endorsement for director of special education shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary Education regulations to an applicant who holds a provisional certificate for any category of special education, has completed at least three (3) years of experience as a teacher or teacher consultant of which two (2) years are in special education, and who in addition thereto, has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation Certification of Professional School Personnel, as adopted by 704 KAR 20:005, TEC 69.0, Section 1. The approved program shall consist of forty-five (45) semester hours of credit above the bachelor's degree level and shall include a master's degree or planned fifth year program in special education.~~

~~(2) The endorsement for director of special education shall have~~

~~the same duration period as the base certificate.~~

~~(3) The endorsement for director of special education shall be valid for the position of teacher consultant for special education or director of special education.~~

~~(4) Effective with the fall term of the 1990-91 academic year, teacher education institutions shall not admit applicants to the program of preparation for the endorsement for director of special education as described in subsections (1), (2), and (3) of this section; instead, applicants shall apply for admission to the preparation program for the professional certificate for director of special education. Persons admitted to the preparation program for the endorsement for director of special education shall complete the program by September 1, 1992.]~~

Section 1. [~~2.~~] (1) The [~~A~~] professional certificate for director of special education shall be issued in accordance with the pertinent Kentucky statutes and [~~State Board for Elementary and Secondary Education~~] administrative regulations of the Education Professional Standards Board to an applicant who has satisfied the prerequisites and who has completed an [~~the~~] approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel and set forth in either Section 4 or 5 of this administrative regulation [~~, as adopted by 704 KAR 20:005, TEC 69.0, Sections 2 and 3~~].

(2) The professional certificate for director of special education shall be issued for a duration period of five (5) years (except as provided in Section 2(1) or 5 of this administrative regulation) and may be renewed for subsequent five (5) year periods based upon completion by September 1 of the year of expiration of two (2) years of successful experience as a director of special education or three (3) semester hours of additional graduate credit related to the position of the director of special education, or forty-two (42) hours of approved training selected from programs approved for the Kentucky Effective Instructional Leadership Training Program.

(3) Any persons whose job duties, regardless of job title, include supervising, directing, administering, or coordinating special education programs for the 1988-89 academic year without an appropriate certificate under this administrative regulation may be approved for 1989-91. [~~, and~~] Such may be extended for 1991-93 upon completion by September 1, 1991, of forty-two (42) participant hours of instruction relevant to the role of the director of special education as determined by the Kentucky Department of Education [~~Office of Education for Exceptional Children~~] or upon completion of one-half (1/2) of the approved curriculum standards for the professional certificate for director of special education. The approval may be extended for the same duration period as the base teaching certificate upon completion of another forty-two (42) participant hours to be completed by September 1, 1993, or completion of the approved curriculum standards for the professional certificate for director of special education. The forty-two (42) participant hours may also satisfy the requirement for the Effective Instructional Leadership Act, KRS 156.101.

(4)[~~(a)~~] All persons whose job description includes supervising, directing, administering, or coordinating special education programs, at the district-wide level, other than those approved under the provisions of subsection (3) of this section, shall be required to hold one (1) of the following:

(a) [~~1.~~] The endorsement for director of special education;

(b) [~~2.~~] The professional certificate for director of special education;

(c) [~~3.~~] The endorsement for supervisor of special education;

(d) [~~4.~~] The endorsement for teacher consultant for special education; or

(e) [~~5.~~] A certificate valid for supervisor of instruction for persons serving in such positions on July 14, 1992, as provided by KRS 157.250;

(f) Persons who hold a certificate valid for supervisor of instruction and are appointed after July 14, 1992, **and until September 1, 1996,** must comply with the requirements of Section 5 of this administrative regulation. [~~The provisions of this paragraph will expire on September 1, 1996.~~]

[~~(b) The superintendent of a school district who is the designated supervisor, director, administrator or coordinator of the district wide special education program for the school district would not be required to hold the specific certification identified in paragraph (a) of this subsection.~~]

Section 2. [~~3.~~] (1) If a person with qualifications identified in Section 1 [~~2~~] of this administrative regulation is not available for the position of director of special education the superintendent on behalf of the local board of education may request a professional certificate for director of special education for a two (2) [~~one (1)~~] year period for an applicant who meets the following:

(a) A valid Kentucky certificate for teachers of exceptional children;

(b) A master's degree;

(c) Three (3) years of full-time experience teaching exceptional children; and

(d) Completion of a course in special and regular education case law.

(2) The applicant shall complete the total curriculum for the professional certificate for director of special education by September 1 of the year of expiration.

Section 3. Prerequisites for the Professional Certificate for Director of Special Education shall include the following:

(1) The applicant shall hold a valid Kentucky certificate for teachers of exceptional children or for school psychologist.

(2) The applicant shall have completed three (3) years of experience as a teacher of exceptional children and/or three (3) years of experience as a school psychologist.

Section 4. The program of preparation for the Professional Certificate for Director of Special Education shall include forty-five (45) semester hours of credit to include a master's degree or planned fifth-year program and a minimum of fifteen (15) semester hours of graduate level credit[~~, except as reduced in subsection (6) of this section,~~] to include the following:

(1) Introduction to exceptional persons.

(2) Special and regular education law and case law.

(3) Special education leadership and administration shall include: a study of roles and responsibilities of special education leadership including program planning, compliance with laws, proposal writing, grant management, accreditation reports, self study and evaluation techniques, school and community activities, and public relations.

(4) Consultation and supervision techniques shall include: consulting and supervisory services; recruitment, selection, and utilization of support services; evaluation of personnel and programs; staff development; and mediation techniques.

(5) Principles of educational administration shall include: a study of the historical development of educational administration, administrative processes; application of theory and values in decision making; and an introduction to modern management methods applied to education.

(6) A practicum of at least six (6) semester hours in consultation and special education administration shall include: supervised experiences in providing consultation services to programs for exceptional children and regular education; experiences with policies and procedures; recordkeeping systems and reports; utilization of support personnel and services; and modern technology in education. On basis of three (3) years of experience as a teacher of exceptional children, the practicum may be reduced to three (3) semester hours.

(7) A minimum of seventy-five (75) clock hours of observation and participation in classrooms for exceptional children (for candidates who do not have experience as a classroom teacher of exceptional children).

Section 5. [~~In accordance with Section 1(4)(a)6 of this administrative regulation,~~] Persons employed **after July 14, 1992, and until September 1, 1996,** by a local school district in an assignment which includes supervising, directing, administering, or coordinating special education programs at the districtwide level, and **who** hold a valid certificate for supervision of instruction shall be issued a one (1) year Professional Certificate for Director of Special Education under the following conditions:

(1) The individual **shall** [~~must~~] provide evidence of being enrolled in a program of preparation which shall include the program outlined in Section 4 of this administrative regulation and in addition, course-work which includes special education instructional methods, materials and programs including preschool special education.

(2) The one (1) year Professional Certificate for Director of Special Education may be renewed for additional one (1) year periods on completion by September 1 of the year of expiration of nine (9) semester hours selected from subsection (1) of this section.

(3) On completion of the program of preparation outlined in subsection (1) of this section the certificate shall be extended for the remainder of the usual five (5) year duration period and renewed in keeping with Section 1(2) of this administrative regulation.

JANICE WEAVER, Chair
APPROVED BY AGENCY: March 2, 1993
FILED WITH LRC: March 4, 1993 at 10 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(As Amended)

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 PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended)

806 KAR 17:090. Preauthorization requirements for coverage of temporomandibular joint disorder and evaluation of medical necessity for treatment of craniomandibular jaw disorder.

RELATES TO: KRS 304.17-319, 304.18-0365, 304.32-1585, 304.38-1937
STATUTORY AUTHORITY: KRS 304.2-110, 304.32-250, 304.38-150
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.32-250 provides that the Commissioner of Insurance may make reasonable administrative regulations he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may make reasonable administrative regulations deemed necessary for the proper administration of KRS Chapter 304.38. This regulation requires health insurers,nonprofit hospital, medical-surgical, dental, and health service corporations, and health maintenance organizations which require preauthorization for coverage of temp oromandibular joint disorder to use a uniform preauthorization request form and to follow certain standards in determining whether treatment of craniomandibular jaw disorder is medically necessary.

Section 1. Definition. "Insurer" means an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, or a health maintenance organization.

Section 2. If an insurer requires preauthorization of nonsurgical treatment for coverage of temporomandibular joint disorder, it shall require the provider of treatment to submit a properly completed temporomandibular joint disorder (TMJ) nonsurgical treatment preauthorization request form **(1993)**, incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays.

Section 3. If an insurer requires preauthorization of surgical treatment for coverage of temporomandibular joint disorder, it shall require the provider of treatment to submit a properly completed temporomandibular joint disorder (TMJ) surgical treatment preauthorization request form **(1993)**, incorporated by reference and available for inspection and copying at the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET), weekdays.

Section 4. In evaluating the information obtained pursuant to Sections 2 and 3 of this administrative regulation, insurers shall utilize the following:

(1) ICD-9-CM Diagnostic Codes for Temporomandibular Disorders.

(a) Intracapsular.

1. 719.68 Other symptoms referable to joint/deviation in form

(repetitive joint noise).

2. 718.38 Disc displacement with reduction/recurrent dislocation of joint/dislocation (open lock).

3. 718.28 Disc displacement without reduction/pathological dislocation (closed lock).

4. 728.5 Hypermobility syndrome.

5. 727.09 Synovitis (previously used term: capsulitis; discitis, retrodiscitis, arthritis).

6. 716.98 Capsulitis/arthropathy, unspecified.

7. 715.38 Osteoarthrosis.

8. 715.98 Osteoarthritis/arthropathy, unspecified.

9. 714.9 Polyarthritides/unspecified inflammatory polyarthropathy.

10. 718.58 Fibrous ankylosis of joint/bony ankylosis of joint.

(b) Extracapsular.

1. 729.1 Myofascial pain/myalgia and myositis, unspecified.

2. 728.81 Myositis/myositis.

3. 728.85 Spasm/spasm of muscle.

4. 728.89 Reflex splinting/muscle contracture/muscle hypertrophy.

(2)(a) Diagnostic studies. Appropriate radiographic studies shall be done based on symptomatology.

1. ADA00330 Panoramic x-rays.

2. ADA00322 Radiograph tomogram survey (TMJ corrected angle tomogram).

3. ADA00321 TMJ transorbital/transcranial projection.

4. 70370 TMJ lateral transcranial/transpharyngeal x-rays (lateral skull).

5. ADA00290 Radiograph anterior-posterior projection of skull/head.

6. 70486 Computerized axial tomography, maxillofacial area; without contrast material.

7. 21116 Injection procedure for temporomandibular joint arthrography.

8. 70333 ADA00320 Temporomandibular joint arthrography, complete procedure.

9. ADA00470 Mounted diagnostic dental study models.

10. 20550 Injection, trigger points.

11. 70328 70330 Radiologic examination, temporomandibular joint, open and closed mouth; unilateral, bilateral (these codes shall not be used. Use one (1) of above codes).

(b) Surgery performed. 20605 Arthrocentesis, aspiration, or injections; intermediate joint (e.g., temporomandibular).

(3) Nonsurgical treatment. This subsection contains standards for submitting claims for temporomandibular joint nonsurgical treatment modalities. These claims shall be prepared using the procedure codes listed below. All codes are CPT codes unless otherwise identified. One (1) initial office visit is allowed within (1) one plan of treatment. Thereafter, the office visit(s) are included in the diagnostic studies and treatment listed below.

(a) 99201 Office and other outpatient medical services, new patient; brief service.

(b) 99215 Comprehensive history and physical examination of patient: Medical history, observations as to pain, pain analysis questionnaire, muscle and TMJ analysis and palpation, occlusal analysis, cranial nerve analysis, cervical analysis, TMJ noises, and mandibular range of motion measurements.

(c) Diagnostic studies. Not every TMJ patient requires an x-ray. Appropriate radiographic studies shall be done based on symptomatology.

1. ADA00330 or 70355 Panoramic x-rays.

2. ADA00322 Radiographic tomogram survey (TMJ corrected angle tomogram).

3. ADA00321 TMJ transorbital/transcranial projection.

4. 70370 TMJ lateral transcranial/transpharyngeal x-ray (lateral skull).

5. ADA00290 Radiograph, anterior-posterior projection of skull/head.

6. ADA00470 Mounted diagnostic models if necessary. Benefits may not provide for cephalometric x-rays for TMJ disorders. Benefits may not provide for casts and unmounted study models for diagnosis. These services may be part of the splint therapy.

7. 20550 Injection, trigger points.

(d) Treatment provided. ADA07880 or ADA 09941.

1. Splint therapy which does not result in any permanent alteration of the occlusion. Splint therapy includes post-insertion, follow-up care, and adjustments.

a. Hard acrylic splint, orthotic, etc.

b. Soft rubber mouth guard.

2. 20605 ADA07870.

a. Arthrocentesis, aspiration, or injections; intermediate joint (e.g., temporomandibular).

b. Physical therapy.

c. Benefits may not provide for behavioral modification, biofeedback, stress management, or services of a psychologist.

(4) Surgical treatment. This subsection contains standards for submitting claims for reimbursement for temporomandibular joint surgical treatment modalities. These claims shall be prepared using the procedure codes listed below. All codes are CPT codes unless otherwise identified. One (1) initial office visit is allowed with one (1) plan of treatment. Thereafter, the office visits are included in diagnostic studies and surgeries listed below.

(a) **99201** **[~~90000~~]** Office and other outpatient medical services, new patient; brief service.

(b) **99215** **[~~90020~~]** Comprehensive history and physical examination of patient. This includes the medical/dental history, observations as to pain, pain analysis questionnaire, muscle and TMJ analysis and a palpation, occlusal analysis, cranial nerve analysis, cervical analysis, TMJ noises, and mandibular range of motion measurements.

(c) Only one (1) of the following listed codes is acceptable for the surgical procedures performed on the same date of service. If bilateral procedures are performed, code each procedure separately on the claim. This may require the listing of one (1) procedure code twice.

1. 29800 Arthroscopy, temporomandibular joint, diagnostic, with or without biopsy, includes irrigation and debridement (separate procedure).

2. 29804 Arthroscopy, temporomandibular joint surgical (includes all arthroscopic reconstruction arthroplasties of the temporomandibular joint, resection of adhesions and joint lavage, etc.).

3. 21240 Arthroplasty, temporomandibular joint, with or without autograft (includes obtaining graft).

4. 21242 Arthroplasty, temporomandibular joint, with allograft (interpositional material such as silastic to replace the meniscus).

5. 21243 Arthroplasty, temporomandibular joint, with prosthetic joint replacement (operative report shall be included with claim).

6. 21010 Arthrotomy, temporomandibular joint (this code is part of 21240, and 21243. Charges may not be accepted for 21010).

7. Physical therapy.

Section 5. This section contains standards for evaluation of claims for craniomandibular (jaw or orthognathic) disorders for medical necessity. To evaluate appropriately a claim for correction of a craniomandibular (jaw or orthognathic) disorder, the existence of a skeletal disorder shall be documented. Any craniomandibular (jaw, orthognathic) maldevelopment that is not correctable with conventional orthodontic treatment, yielding a stable and functional post-treatment occlusion without worsening the patient's original aesthetic condition, shall be a covered surgical procedure.

(1) Indications for craniomandibular (jaw, orthognathic) surgery shall include evidence of at least one (1) of the following:

(a) Physical evidence of musculoskeletal, dento-osseous, or soft tissue deformity.

(b) Imaging evidence of musculoskeletal, dento-osseous, or soft tissue deformity:

1. Deviation form cephalometric norms; or
2. Other imaging disclosure of abnormality.

(c) Malocclusion deviating from a normal occlusal relationship that cannot reasonably be corrected by nonsurgical means (e.g., orthodontics or prosthetics).

(d) Inability to open or close the jaws adequately.

(2) The following data shall be submitted so that claims may be evaluated appropriately:

(a) A narrative of the patient's presenting clinical condition with appropriate ICD-9 diagnostic codes (subsection ([~~1~~]3) of this section) and appropriate CPT codes for treatment (subsection (4) of this section).

(b) Study models with appropriate bite registration.

(c) Intra-oral and extra-oral photographs.

(d) Cephalometric x-ray.

(e) The data required in paragraphs (b), (c), and (d) of this subsection may be substituted with appropriate paper documentation using current computer imaging systems that have the ability to photograph all necessary information including appropriate views of study models. This allows the submission of paper documentation rather than the bulky study models and bite registrations.

(3) The following ICD-9 code shall be used in determining whether treatment of craniomandibular (jaw, orthognathic) disorder is medically necessary:

(a) 524.0 Major anomalies of jaw size.
1. Hyperplasia.
2. Hypoplasia (maxillary, mandibular).
3. Macrognathism (maxillary, mandibular).
4. Micrognathism (maxillary, mandibular).
5. Macrogenia (maxillary, mandibular).
6. Microgenia (maxillary, mandibular).

(b) 524.1 Anomalies of relationship of jaw to cranial base.
1. Asymmetry of jaw.
2. Prognathism (maxillary, mandibular).
3. Retrognathism (maxillary, mandibular).

(c) 524.2 Anomalies of dental arch relationship.
1. Crossbite (anterior, posterior).
2. Disto-occlusion
3. Mesio-occlusion.
4. Midline deviation.
5. Open bite (anterior, posterior).
6. Overbite (excessive): deep, horizontal, or vertical.
7. Overjet.
8. Posterior lingual occlusion of mandibular teeth.
9. Soft tissue impingement.

(d) 524.5 Dentofacial functional abnormalities.
1. Abnormal jaw closure.
2. Malocclusion due to abnormal swallowing, mouth breathing, and tongue, lip, or finger habits.

(e) 526.89 Unilateral condylar hyperplasia or hypoplasia of mandible.

(f) 754.0 Hemifacial atrophy or hypertrophy.

(4) The following CPT codes shall be used in determining whether treatment of craniomandibular (jaw or orthognathic) disorder is medically necessary:

(a) Mandible.
1. Mandibular sagittal split osteotomy.
a. Without rigid fixation: right 21195; left 21195.
b. With rigid fixation: right 21196; left 21196.
2. Mandibular ramus osteotomy (Horizontal, Vertical, C or L).
a. Without graft: right 21193; left 21193.
b. With graft: right 21194; left 21194.
3. Mandibular segmental osteotomy: 21198.
4. Genioplasty (Augmentation, sliding): 21120.
5. Genioplasty (Reduction, sliding): 21121.

(b) Maxillae.
1. LeForte I maxillary osteotomy.
a. Single piece: 21144.
b. Single piece with graft: 21145.
2. LeForte I maxillary osteotomy (segmental).
a. Two (2) or more pieces: 21146.
b. Three (3) or more pieces: 21147.
3. LeForte II.
a. Without graft: 21150.
b. With graft: 21151.
4. LeForte III.
a. Without graft: 21154.
b. With graft: 21155.

(c) Osteoplasty (Facial bones).
1. Augmentation: 21208.
2. Reduction: 21209.

(d) Cotreatment.
1. Assistant surgeon: Modifier 80.
2. Cosurgeon: Modifier 62.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: February 23, 1993
FILED WITH LRC: March 3, 1993 at 11 a.m.

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

810 KAR 1:009. Jockeys and apprentices.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS **230.260** [~~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 **jockey** [~~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; **if** [~~provided, however~~]:

(1) The person is a **licensed stable employee assistant trainer, or trainer** [~~licensee~~] with at least one (1) year of service with a racing stable; **and**

(2) A licensed trainer certifies in writing to the stewards that the person has demonstrated sufficient horsemanship **as evidenced by his control of the animal while mounting, riding, and dismounting in race and nonrace conditions** to be permitted the probationary mounts; **and**

(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; **and**

(4) **The stewards determine that the person:**

(a) Intends to become a licensed jockey;

(b) Possesses the physical ability to be a jockey; and

(c) Has demonstrated his ability to ride in a race without jeopardizing the safety of horses or other jockeys in the race.

(5) A person shall not ride in any probationary races without prior approval of the stewards. [~~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 administra-

tive 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. **These** [~~The~~] contracts shall be:

(a) Approved by the stewards;

(b) [~~and~~] Filed with the racing commission; **and**

(c) [~~shall be~~] Binding in all respects on the **parties to the contract;**

(d) [~~signatories thereof.~~] An apprentice who **has** [~~is~~] not **entered into a contract pursuant to this subsection** [~~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 **promulgated by the** [~~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 **if** 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 PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended)

811 KAR 1:070. Licensing; owners, drivers, trainers, and grooms [and agents].

RELATES TO: KRS **230.310** [230.630(1), (3), 230.640, 230.700, 230.710]

STATUTORY AUTHORITY: KRS **230.260** [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, **and** 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. **The** [Said] application shall be on forms provided by the commission and shall be filed at any commission office. **The** [Such] license shall be presented to the clerk of the course at the time **the** [said] horse is entered in a race.

Section 2. Leased Horses. Any horse under lease **shall** [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 **administrative regulation shall** [~~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 **by this administrative regulation** [~~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 **shall meet the following requirements:** [~~in addition to any other requirements mentioned herein shall:~~]

(a) **Not have been convicted of a crime described in KRS 335B.010(4) or which otherwise directly relates to the qualifications of driving a harness horse at a race meeting.** [~~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 **shall** [~~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 **the** [~~such~~] person to submit to a physical examination and **the** [~~such~~] examination **shall** [~~must~~] be completed within thirty (30) days from **the** [~~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**'s license** shall **show proof that he is duly** [~~be~~] licensed **as a trainer** by the United States Trotting Association and **shall meet the requirements set forth in 811 KAR 1:085, Sections 1, 2, 3, 5, and 14, and 811 KAR 1:090, Section 6.** [~~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 **for the calendar year shall** [~~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 **administrative regulations** [~~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.

(5) [~~(6)~~] Assaults.

(6) [~~(7)~~] Offensive and profane language.

(7) [~~(8)~~] Smoking on the track in colors during actual racing hours.

(8) [~~(9)~~] Warming up a horse prior to racing without colors.

(9) [~~(10)~~] Disturbing the peace.

(10) [~~(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.

Section 15. Incorporation by Reference. (1) The "Application for Owner's License, June 1993", "Driver's Application for License, June 1993", "Provisional and Full Driver's Application for License, June 1993", are incorporated by reference.

(2) Application forms may be inspected, copied, or obtained at the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

WAYNE G. LYSTER, III, Chairman
APPROVED BY AGENCY: April 13, 1993
FILED WITH LRC: April 15, 1993 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of the State Fire Marshal
(As Amended)

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. **Copies are available at the Commission Office in the Department of Housing, Buildings and Construction, 1047 U.S. 127 south, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.**

(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. **Copies are available at the Commission Office in the Department of Housing, Buildings and Construction, 1047 U.S. 127 south, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.**

(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.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

907 KAR 1:016. Psychiatric hospital services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441 Subparts C, D, 456 Subparts G, H, I, 42 USC 1396 a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [~~in accordance with Title XIX of the Social Security Act~~]. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to services in psychiatric hospitals for which payment shall be made by the Medicaid [~~Medical Assistance~~] program in behalf of both the categorically needy and the medically needy.

Section 1. Provision of Service. Inpatient services provided in an [~~institution accredited by the~~] appropriately licensed [~~state agency as a~~] psychiatric hospital participating in the Medicaid program [~~which meets the requirements specified in Section 1861(f) of the Social Security Act~~] shall be limited [~~made available~~] to recipients of medical assistance age sixty-five (65) or over or under age twenty-one (21) [~~as limited by Section 1905(a)(14) and 1905(a)(16) of the Social Security Act who~~] meeting [~~appropriate~~] patient status criteria. Services shall be provided in accordance with the federal Medicaid requirements [~~shown in federal regulations at 42 CFR 441, Subparts C and D, and 42 CFR 456 Subparts G, H, and I,~~] and with Medicaid policies shown in the Psychiatric Inpatient Facility [~~Hospital~~] Utilization and Placement Review Manual, revised March 1, 1993 [~~dated July 1, 1990~~] which is hereby incorporated by reference and referred to hereafter as "the manual". The manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 2. Durational Limitation. Durational limitation on payment in respect to the aged recipient and children under age twenty-one (21) **shall be** [~~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 **shall not** [~~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.

(1) The patient shall not qualify for Medicaid patient status unless:

(a) The person is qualified for admission, and continued stay as appropriate;

(b) [when] Their needs mandate psychiatric hospital care on a daily basis; and

(c) [when,] As a practical matter, the necessary care can only be provided on an inpatient basis.

(2) 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:

(a) Determine patient status;

(b) [and] Ensure that proper treatment of the individual's psychiatric conditions requires services on an inpatient basis under the direction of a physician;

(c) **Ensure** 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

(d) **Ensure** that ambulatory care or alternative services available in the community are not sufficient to meet the treatment needs of the recipient.

Section 5. Reevaluation of Need for Services. All mental hospital stays shall be certified for a specific length of time, as deemed medically appropriate by the utilization review organization considering the health status and care needs of the applicant or recipient. [Mental hospital services shall be provided for so long as the health status and care needs are within the scope of program benefits as described in Sections 1, 2, and 4 of this regulation.] Patient status shall be reevaluated at least once every thirty (30) days. Upon the expiration of the certified length of stay, the Medicaid Program shall not be responsible for the cost of care unless the recipient or his authorized representative requests and the utilization review organization certifies additional days. [If a reevaluation of care reveals that the patient no longer requires psychiatric hospital care (i.e., does not meet patient status criteria), payment shall continue only through the last day for which the stay is certified, unless an appeal is made in a timely manner as shown in the manual.]

Section 6. Reconsideration and Appeals. When an adverse determination is appealed by the applicant or recipient, the decision shall be reviewed by the cabinet (or its representative) using time frames specified in the manual to determine whether the decision should be reversed. [If the adverse determination is appealed within ten (10) days of the date of the decision, payments may continue as provided for in 904 KAR 2:055, Hearings and appeals.]

Section 7. The amendments to this regulation shall be effective with regard to services provided on or after March 1, 1993 [July 1, 1990].

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: February 15, 1993
FILED WITH LRC: February 24, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and
Mental Retardation Services
(As Amended)

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

RELATES TO: KRS Chapter 189A
STATUTORY AUTHORITY: KRS 189A.040(6), 194.030(9)

NECESSITY AND FUNCTION: KRS Chapter 189A requires the Cabinet for Human Resources to promulgate administrative regulations to prescribe standards for the licensing and operation of education and treatment facilities and programs, for offenders receiving assessment, education, or treatment under the driving while impaired law.

Section 1. Definitions. [As pertaining to the cabinet's regulations regarding DUI programs unless the content otherwise requires:]

(1) "Cabinet" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(2) "Division" means the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, [275 East Main Street,] Frankfort, Kentucky 40601 [40621].

(3) "DUI" means driving while under the influence of alcohol, drugs or intoxicating substances.

(4) "Program" means any public, private or government entity eligible to deliver DUI assessment, education and treatment services.

(5) "Certification" means the process by which the Division of Substance Abuse recognizes and authorizes any program, assessor or instructor to provide DUI services.

(6) "Services" means the level of care appropriate for a client based on an evaluation of the client's needs.

(7) [("Licensee" means the individual or entity approved and licensed by the Cabinet for Human Resources, Office of Inspector General, Division of Licensing and Regulation.

(8)] "Assessment" means the procedure used to obtain information about a client's use of alcohol and other drugs and to determine the problems and needs of a client in order to recommend appropriate services.

(8) [(9)] "Education" means a course which delivers factual information about alcohol and other drugs to increase awareness, knowledge, and change a client's attitude and behavior in relation to substance abuse.

(9) [(10)] "Treatment" means outpatient, intensive outpatient, inpatient, residential, or detoxification services provided to clients in need of substance abuse services.

[(11) "Program survey form" means a form issued by the division to the program to collect all necessary program information.

(12) "Program code" means a three (3) digit number issued to a program by the division when certification is granted.

(13) "Survey report of change form" means a form used by a program when submitting any new or revised information to the division.]

(10) [(14)] "Program administrator" means the person responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes all required services.

[(15) "Memorandum of understanding (MOU)" means a written communication between programs outlining the duties and responsibilities of each program.]

(11) [(16)] "Certified assessor" means a person who has been trained and approved by the division to evaluate the needs of clients and to recommend appropriate services.

(12) [(17)] "Certified instructor" means a person who has been trained and approved by the division to provide education services in a DUI program.

(13) [(18)] "Approved curriculum" means:

(a) "Talking about alcohol driving unimpaired nine (9) hour";

(b) "Talking about alcohol driving unimpaired twenty (20) hour";

(c) "Kentucky alcohol and other drug education program nine (9) hour"; and

(d) "Kentucky alcohol and other drug education program twenty (20) hour."

[(19) "Individual" means a person certified by the division to conduct assessment and education services.

~~(20) "Uniform citation" means the citation given to the defendant when the defendant is arrested for driving under the influence.~~

~~(21) "Administrative Office of the Courts (AOC) Form 494" means the form completed by the circuit clerk on the day of the defendant's conviction and which is sent to the program where the defendant is referred for assessment.~~

~~(22) "Cabinet for Human Resources (CHR) Form PAM-MHMR 052" means the form completed by the program which conducts the client's assessment, and which is then used to notify the court, the client, Department of Transportation (DOT), and the division when a client has satisfactorily completed any required services.~~]

(14) [~~(23)~~] "Computerized screening instrument" means the Kentucky driver risk inventory (DRI).

[~~(24) "Completion notice" means the client's copy (pink) of CHR Form PAM-MHMR 052.~~]

(15) [~~(25)~~] "Case management" means an administrative function to insure coordination of client services and continuity of care.

(16) [~~(26)~~] "Court" means the court where a client is convicted of DUI.

[~~(27) "Department of Transportation (DOT)" means the Commonwealth of Kentucky, Transportation Cabinet, Department of Vehicle Regulation, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.~~

~~(28) "Nine (9) hour basic education course" means an education service for low risk first time offenders consisting of a minimum of nine (9) hours of instruction and group interaction.~~

~~(29) "Twenty (20) hour early intervention education course" means an education service for first or multiple offenders consisting of a minimum of twenty (20) hours of instruction and group interaction.~~]

(17) [~~(30)~~] "Client" means any individual receiving services in a DUI program.

(18) [~~(31)~~] "First offender" means a person convicted of DUI for the first time within a five (5) year period.

(19) [~~(32)~~] "Multiple offender" means a person convicted of a second or subsequent DUI within a five (5) year period.

[~~(33) "Low risk" means a client who has been assessed as not having an alcohol or substance abuse problem requiring treatment.~~

~~(34) "Medium risk" means a client who has been assessed as having an alcohol or substance abuse problem but is not chemically dependent.~~]

(20) [~~(35)~~] "Satisfactorily completed" means a client has fulfilled all requirements of the program and has received maximum benefits from the services received.

[~~(36) "Negative certification action" means an action by the division to revoke, modify, suspend, or deny certification or recertification of a DUI program, assessor or instructor.~~

~~(37) "Hearing officer" means the person designated by the division to conduct a hearing and make a recommendation to the division on any appeal of negative certification action.~~]

(21) [~~(38)~~] "DUI services" means assessment, education, or treatment services provided by an eligible DUI program.

[~~(39) "Applicant" means any individual or entity who has been licensed by the cabinet, and is making application for certification to the division.~~]

(22) [~~(40)~~] "Facility" means the physical area, including the grounds and buildings where program functions take place.

[~~(41) "Release of information" means a client's written authorization for a program to release information from that client's case file.~~

~~(42) "Clinical services supervisor" means a person who meets the qualifications pursuant to the definition in 908 KAR 1:190.~~]

Section 2. Licensing Requirements. (1) An individual or entity desiring to provide DUI services as an assessment facility and program, education facility and program, or treatment facility and program shall first obtain a license from the cabinet in accordance with the drug abuse treatment and education center (DATE center) regulations, 908 KAR 1:150 through 908 KAR 1:260; and the nonmedical alcohol treatment and education center (NATE center) administrative regulations, 908 KAR 1:010 through 908 KAR 1:140.

(2) Programs conducted in a facility established and maintained by a licensed federal hospital shall be exempt from state licensing requirements, as such facilities are created subject to federal licensure and regulatory requirements, in accordance with 38 USC 301 [~~201~~], 38 USC 1720A [~~620A~~], 38 USC 7333 [~~4133~~], and 38 USC 7334 [~~4134~~].

(3) Programs conducted in a facility established and maintained by a hospital licensed by the cabinet shall be exempt from obtaining a DATE or NATE center license in accordance with 908 KAR 1:160, Section 1(1)(c).

(4) The cabinet shall notify the division in writing when an individual or entity:

(a) Is granted a license as a DATE or NATE center;

(b) Has stated in its application that it desires to provide DUI services; and

(c) If its license has been renewed, suspended or revoked.

Section 3. Certification Requirements. (1) **Program certification requirements.**

(a) A licensed individual or entity, desiring to provide DUI assessment or education services shall be certified by the division. [~~An individual or entity, properly licensed, and desiring to provide DUI assessment or education services, shall obtain program certification from the division.~~]

(b) A properly licensed treatment facility may provide DUI treatment services without receiving program certification from the division.

(c) A certified program may operate statewide if it is properly licensed and certified in all service locations.

(d) All service locations shall be subject to the same qualifications as the central office location.

(e) A program may be certified to provide assessment, or education services or assessment and education services.

(f) A program shall have at least one (1) individual on staff who has been certified by the division, to be a certified program.

(g) Program administrator.

1. The program administrator shall be knowledgeable of the requirements for operating a DUI program and is responsible for the services delivered by the program.

2. The program administrator shall be responsible for insuring that all staff having primary responsibility for the delivery of DUI services, are knowledgeable of the DUI law and administrative regulation.

(2) **Application for program certification; program survey form; and clinical services supervisor qualifications.**

(a) Individuals or entities seeking program certification shall:

1. Submit a written application to the division;

2. Sign a statement of ethical practice contained on the application for DUI program certification;

3. Agree to abide by the provisions of this administrative regulation; and

4. Submit a program survey form for each location where the applicant desires to provide DUI assessment or education service;

(b) A program survey form shall be completed at the time of the initial application for program certification and whenever a program opens a new clinic location. The program survey form shall contain the:

1. Types of services provided;

2. Fees charged for those services;

3. Names and titles for all certified staff which provide assessment or education services at that location; and

4. Name of the clinical services supervisor which shall be at that location;

(c) There shall be a clinical services supervisor for each

program location who holds:

1. A masters degree or greater in psychiatry, psycholo-gy, social work;

2. A nursing degree with a specialty in psychiatric or mental health nursing or other mental health program; or

3. A certified chemical dependency counselor (CCDC);

4. In addition to the education requirement in subparagraphs 1 through 3 of this paragraph, the clinical services supervisor shall have eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to employment with the program; and shall maintain twenty (20) clock hours of continuing education in chemical dependency treatment annually.

(d) The division shall issue a three (3) digit code when a program is certified.

(e) The name and location of each certified program shall be included on any published list of certified programs.

(3) Program certification directory.

(a) The division shall publish an annual certification directory on July 1 of each year, listing:

1. Programs certified to provide assessment services;
2. Fees charged; and
3. Program service location addresses.

(b) The division shall provide the directory to:

1. District court judges;
2. Circuit court clerks;
3. Certified programs; and
4. The public upon request.

(c) The division may issue additions, revisions and corrections to the directory on October 1, January 1, and April 1 each year.

1. Programs shall report additions, revisions and corrections on a division "Report of Change Form".

2. "Report of Change Forms" shall be submitted at least thirty (30) days prior to the publication dates in this paragraph.

[~~Any individual or entity eligible to be certified as a program shall make application in writing to the division, sign a statement of ethical practice contained on the application for DUI program certification, and agree to abide by the standards stated in this administrative regulation. The division shall provide an application for program certification along with a program survey form to be completed by the applicant and returned to the division. The applicant shall be required to submit to the division a separate program survey form for each location where the applicant is licensed, and where the applicant desires to provide DUI assessment or education services. The applicant shall designate on the program survey form the types of services that will be provided, the fees charged for such services, [and] the names and titles of all certified staff providing assessment or education services at that location, and the name of the clinical services supervisor for that location. The clinical services supervisor shall be an individual with a masters degree or greater in psychiatry, psychology, social work, or nursing with a specialty in psychiatric or mental health nursing or other mental health program; or a certified chemical dependency counselor (CCDC). The individual shall also have eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to employment with the program. The individual shall maintain on an annual basis twenty (20) clock hours of continuing education in chemical dependency treatment. The division shall issue a three (3) digit program code to the program when certification is granted and include the name and location of the program on any published list of certified programs. A program shall complete a program survey form at the time of application for initial program certification and whenever a program opens a new clinic location.~~

~~(a) The division shall publish, on an annual basis, on July 1, a directory listing all programs certified to provide assessment services, the fees charged for such services, and the program service location addresses. The division shall issue the directory to all district court judges, district court clerks, and certified programs, and shall make it available to the public upon request.~~

~~(b) The division may~~ [~~shall~~] ~~issue directory additions, revisions and corrections on October 1, January 1, and April 1 each year. A program shall submit all additions, revisions and corrections, in writing, on a [program survey] report of change form obtained from the division, at least thirty (30) days prior to the publication dates.~~]

(4) [~~(3)~~] The application for DUI program certification, the program survey form, and the report of change form are hereby incorporated by reference. Copies of the application for DUI program certification, the program survey form, and the report of change form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(5) Expiration and renewal of program certification. [~~(4)~~] The program certification shall remain in effect for a [~~the~~] period of two (2) years and [~~licensure not to exceed one (1) year,~~] is renewable for a like period, [~~and shall expire simultaneously with the expiration of the program's license,~~] unless earlier suspended or revoked. The program shall request recertification, in writing, thirty (30) [~~forty five (45)~~] days prior to the expiration of certification. If certification has lapsed for more than sixty (60) days, programs shall submit a new application and shall [~~will~~] be considered as a new applicant. The division shall notify the program, in writing, when certification is issued, renewed, suspended or revoked.

(6) Program certification not to be transferred. [~~(5)~~] [~~(4)~~] The program certification shall apply only to the program so certified and is not transferable. The program shall be responsible for notifying the division, in writing, when there is a change in ownership or control, a change in location, a change in the types of services provided, or a change in fees charged for such services. If there is a change [~~In the event of a change~~] of ownership, a new application for certification shall be made to the division in the same manner as if the owner were applying for a new program.

(7) Program certification referrals. A program shall accept referrals from other programs or from the courts.

(a) A program may refuse a client referral because of:

1. Inadequate staff;
2. Lack of an appropriate service; or
3. Because of a client waiting list.

(b) With a client's written authorization for release of information copies of the DUI assessment and other client records pertinent to the client's treatment shall be released by the referring agency.

(c) The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.

(d) A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals.

1. The MOU shall fully outline the duties, responsibilities and terms of agreement to all referring programs;

2. The terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.

(8) Inspections by the division. The division shall conduct at least one (1) inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards.

(a) The division may conduct more than one (1) inspection annually.

(b) Inspections may be made at any of the program's locations and may be unannounced.

(c) The division shall notify the program, in writing, within sixty (60) days of the result of the inspection.

(d) The division shall provide a copy of the results of its inspection to the program within sixty (60) days.

(e) The division may inspect the offices, files, client records and other materials of any certified program to ensure compliance with this administrative regulation.

1. The program shall:

a. Cooperate with representatives of the division; and

b. Provide all records and materials requested.

2. The program shall allow division representative to attend and observe any assessment or education session conducted by the program during the course of its inspection.

(9) Client and program records. Client records shall contain all information pertinent to the provision of program services.

(a) Program records shall be confidential.

(b) Program records shall not be released, unless:

1. The client consents in writing;

2. The court orders the records released; or

3. The division requests release of the records as a part of the compliance review.

(c) Client and program records shall be maintained for a minimum of five (5) years after which the records may be destroyed.

(d) Records may be destroyed by burning or shredding after the five (5) year record retention period in paragraph (c) of this subsection.

~~[(6) [(5)] A program shall accept referrals from other programs or from the courts. A program may refuse a client referral because of inadequate staff, lack of an appropriate service, or because of a client waiting list. With a client's written authorization for [proper] release of information [forms signed by the client], copies of the DUI assessment and other client records pertinent to the client's treatment shall be released by the referring agency. The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.~~

~~(7) [(6)] A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals. The MOU shall fully outline the duties and responsibilities of the programs to each other and the terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.~~

~~(8) [(7)] The division shall conduct at least one (1) [unannounced] inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards. In their discretion, the division may conduct more than one (1) inspection annually. The inspection may be at any of the program's locations. Any inspection conducted by the division may be unannounced. The division shall notify the program, in writing, within sixty (60) [thirty (30)] days of the results of the inspection.~~

~~(9) [(8)] The division shall have the right to inspect any office, files, client records or other materials of any certified program to insure compliance. The division shall have the right to attend and observe any assessment or education session conducted by the program. During these inspections a program shall cooperate with the division's representatives and shall provide such records or materials requested. The client record shall contain all information pertinent to the provision of services. Program records shall be confidential and shall not be released without written consent of the client, unless court ordered or requested by the division, as part of a compliance review. A program shall maintain client records for a minimum of five (5) years. When records are discarded they shall be burned or shredded.]~~

(10) Revocation or suspension of program certification. [~~(9)~~] The division shall suspend or revoke the certification of any program that is not in compliance with the applicable certification standards. The division shall notify the program, in writing, of any pending certification action, and shall provide written reports citing observed deficiencies as they relate to the certification standards. The program shall [~~must~~] submit an acceptable plan of correction for cited deficiencies to the division within ten (10) working days from the date the program receives the inspection report. The revocation or suspension of program certification shall be effective on the date stated in the notice sent to the program by the division. Programs shall have the right to appeal any suspension or revocation of their program certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

Section 4. Certification of Individual DUI Assessors, Instructors and Education Service Providers. (1) Individual certification. [~~(11)~~] [~~(10)~~] All individuals desiring to provide assessment or education services shall meet the requirements for certification and receive certification from the division.

(a) A program shall employ individuals who hold valid certification from the division to provide DUI assessment and DUI education services.

(b) It shall be the duty and responsibility of the program to insure that any individual in their employ providing DUI assessment services or DUI education services complete all training required by the division. Only training approved by the division shall suffice as proper training for DUI assessment and DUI education services.

(c) Application for DUI assessor or instructor.

1. An individual shall make application for DUI assessor or DUI instructor certification by submitting an application for DUI assessor or DUI instructor training.

2. The application shall be accompanied by a copy of all required:

a. Transcripts;

b. Diploma;

c. Certificate;

d. Certifications; or

e. Proof of work experience. [~~The application shall be accompanied by a copy of any required transcript, diploma, certificate, certification, or proof of work experience.~~]

(d) An individual certified by the division shall not provide DUI assessment services or DUI education services except in a program that is certified by the division.

(e) [~~(a)~~] An individual providing DUI assessment or DUI education services for a program shall be considered an agent of the program and the program shall share the responsibility for all acts performed by the individual within the scope of employment.

(f) [~~(b)~~] If a certified DUI assessor or DUI instructor terminates association with a program, the program shall notify the division in writing.

(2) Notification concerning completion of training.

(a) [~~(12)~~] [~~(11)~~] The division shall notify the program and the individual, in writing, within thirty (30) days after completion of a DUI assessor or DUI instructor training session that the individual has satisfactorily completed the training, has met all of the requirements for certification, and has been certified.

(b) The division shall notify the program and the individual, in writing, of any observed deficiencies, as they relate to DUI assessor and DUI instructor certification, within thirty (30) days after completion of a training session.

(c) The division shall state the reasons for withholding DUI assessor or DUI instructor certification and shall notify the program and the individual of any required corrective plan of action.

(3) Minimum competency requirements for DUI assessor. [~~(13)~~] [~~(12)~~] An individual desiring certification as a DUI assessor shall demonstrate minimum competency in order to successfully complete the requirements for DUI assessor certification.

(a) An individual desiring [~~DUI~~] certification as a[~~n~~] DUI assessor shall have the following education or work experience [~~training~~]:

1. Bachelor level degree in Human Services with certified chemical dependency counselor (CCDC) trainee status; working under [~~weekly~~] clinical supervision where in weekly personal contact

meetings, DUI assessments and [;] treatment plans [and staff notes] are reviewed and cosigned by [in a personal contact meeting, with] a clinical services supervisor, as defined in subsection (2) of this section [Section 3(2) of this administrative regulation. An] Individuals holding CCDC trainee status have [has] until their [the] date of application for [their] DUI assessor recertification to become a CCDC; or

2. Qualified mental health professional defined as:

a. Psychiatrist - board certified or board eligible;

b. Psychologist - licensed clinical psychologist, certified psychologist, or a psychological associate;

c. Psychiatric nurse - or registered nurse with one (1) of the following combinations of education and experience:

(i) Master of science in nursing (MSN) with specialty in psychiatric or mental health nursing;

(ii) Bachelor of science in nursing (BSN) and a minimum of one (1) year of work experience in a mental health setting;

(iii) Three (3) year educational program diploma with two (2) years of work experience in a mental health setting;

(iv) Associate degree in nursing (ADN) with three (3) years of work experience in a mental health setting; or

d. Psychiatric social worker - MSW or MSSW; or

e. Professional equivalent as defined by the Division of Substance Abuse; or

[f. Mental health associate - an individual with a bachelor's degree in a mental health related field, working under the supervision of a clinical services supervisor; or]

3. Certified chemical dependency counselor (CCDC). [; or

4. Certified chemical dependency counselor (CCDC) trainee, with two (2) years clinical work experience in the substance abuse treatment field, working under weekly clinical supervision of a CCDC, an individual with a bachelor's degree in the human services field, or a qualified mental health professional as defined in this regulation. An individual holding CCDC trainee status who was certified by the division prior to January 1, 1992 has until January 1, 1995 to become a CCDC.]

(b) An individual desiring certification as a DUI assessor shall successfully complete the following training requirements:

1. Attend and participate in all sessions of the assessor training;

2. Obtain an eighty (80) percent or above overall score on performance in the following areas:

a. A written pretest and posttest on general course content;

b. A written pretest and posttest on the computerized assessment instrument;

c. A demonstration of ability to conduct an assessment interview; and

d. A demonstration of ability to make a client referral based on a case study.

3. Receive the recommendation of the trainer(s) and the division's representative.

4. Sign a statement [agreeing to abide by a code] of ethical practice contained in [on] the DUI assessor certification application packet and agree to abide by the standards stated in this administrative regulation [these regulations].

(4) Minimum competency requirements for DUI instructor. [(14)] [(13)] An individual desiring certification as a DUI instructor shall demonstrate minimum competency in order to successfully complete the requirements for DUI instructor certification.

(a) An individual desiring certification as a DUI instructor shall have the following education or work experience [training]:

1. Bachelors degree in a related field - social work, psychology, sociology, counseling, or education; or

2. Associate degree and two (2) years of work experience in the substance abuse field; or

3. High school diploma or a general education development (GED) equivalency certificate and four (4) years of work experience in the substance abuse field; or

4. Professional equivalent as defined by the Division of Substance Abuse.

(b) An individual desiring certification as a DUI instructor shall successfully complete DUI instructor training in one (1) of the curricula approved by the division. The individual shall attend and participate in all sessions of the training; take a pretest and obtain a score of eighty (80) out of a possible 100 points on a written posttest; demonstrate ability to make an oral presentation of assigned material; demonstrate group facilitation skills; receive the recommendation of the trainer(s) and the division's representative; and sign a statement [agreeing to abide by a code] of ethical practice contained in [on] the DUI instructor certification application packet and agree to abide by the standards stated in this administrative regulation [these regulations].

(5) Incorporation by reference of DUI assessor and instructor application packet. [(15)] The application packet for DUI assessor and DUI instructor certification is hereby incorporated by reference. Copies of the application packet may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(6) Certification renewal and duration for DUI assessor and instructor.

(a) [(16)] [(14)] Certification for DUI assessors and DUI instructors shall be for a period of five (5) years from the effective date of this administrative regulation or from the date of the individual's initial certification as a DUI assessor or DUI instructor, whichever is longer, is renewable for a like period, and shall expire on the anniversary date of certification, unless earlier suspended or revoked.

(b) It shall be the duty and responsibility of the individual, to submit to the division, a completed recertification application and all other required forms, at least sixty (60) days prior to the date of expiration of the DUI assessor or DUI instructor certification.

(c)1. An individual shall have achieved the standards for clinical services supervisor as defined in Section 3(2)**(c)** of this administrative regulation at the time of application for recertification as a DUI assessor.

2. If an individual has not **met the requirements of Section 3(2)(c) of this administrative regulation** [achieved such standards] the individual's application for DUI assessor recertification shall be denied and any previous DUI assessor certification shall expire. An individual desiring recertification as a DUI instructor shall attend, participate and demonstrate competency at a training seminar authorized by the division prior to application for DUI instructor recertification. [An individual shall attend any recertification training required by the division, during the previous sixty (60) month period.]

(d) If certification has lapsed for more than one (1) year, an individual's recertification application shall be processed as a new application, and the individual shall attend all additional training required by the division.

(e) An individual shall have the right to appeal any suspension or revocation of their DUI assessor or DUI instructor certification. Hearing procedures involving certification shall be conducted in accordance with this regulation.

Section 5. Certified Program, Assessor and Instructor Complaints. [(17)] [(15)] All complaints relating to a certified program, a certified DUI assessor, or a certified DUI instructor, that are not resolved by the program through their agency grievance procedures, shall be sent to the division, in writing, and signed by the complainant. The division shall investigate the complaint and take any necessary action [notify the complainant, in writing, within thirty (30) days, of the action taken].

Section **6.** [4.] Assessment Requirements. (1) **Court Referral of DUI Offenders.** The courts shall refer all convicted first and multiple

DUI offenders for an assessment to a certified program, listed in a directory, provided to the courts by the division.

(a) The court clerk, shall on the day of conviction, send a copy of the [~~client's~~] uniform citation issued to the client at the time of arrest for DUI, attached to the Administrative Office of the Courts (AOC) Form 494, to the program which will conduct the client's assessment.

(b) [~~(2)~~] AOC Form 494 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(2) Computerized screening shall be used.

(a) [~~(3)~~] A program providing DUI assessment services shall use only the computerized screening instrument approved by the division. The DUI assessment shall be conducted by an assessor holding valid certification from the division.

(b) The computerized screening instrument portion of the assessment may be administered individually or in groups.

(c) A program shall arrange for the oral reading of the assessment questions and instructions for clients who are unable to read the written instructions.

(d) The long form of the computerized screening instrument shall be administered in all cases except when administered to a group of more than ten (10), when administered to a reading disabled individual, or when administered to an individual being reassessed within thirty (30) days of their initial assessment. In such cases a program may administer the short form of the computerized screening instrument.

(e) A program shall maintain a roster of all clients assessed, in a format approved by the division; [~~, and~~] a copy of such roster shall be maintained in the program's central administrative files and made available to the division upon request.

(3) Assessment requirements.

(a) [~~(4)~~] An assessment shall include:

1. The administration of the approved computerized screening instrument;

2. A [~~structured~~] private clinical interview between the certified DUI assessor and the client;

3. A discussion of referral options and client resources;

4. A determination of the severity of a client's problem; and

5. Referral to a program of the client's choice offering services at the level of care needed by the client.

(b) A program shall not conduct an assessment for a client, if the client has received an assessment for that conviction at another DUI program. A program shall refer a client back to the court, if a client previously received an assessment for that conviction, at another DUI program. A client shall pay all required fees for the assessment to the program.

(4) Assessment referrals.

(a) [~~(5)~~] An assessor shall refer any client assessed as needing education or treatment services to any program eligible to provide substance abuse or chemical dependency education or treatment services.

(b) The assessor shall refer a client to receive the type of service appropriate to the client's needs at their own program or to any other eligible program of the client's choice.

(c) The client shall choose the program where the client desires to receive education or treatment services but the client shall not choose the level of care or type of service that the client is to receive.

(5) Clients with special needs.

(a) [~~(6)~~] A program shall identify any client with special needs at the time of assessment in order to make an appropriate referral. Specifically, the computerized screening instrument shall contain a set of questions designed to identify whether or not a client is pregnant, and if so, the stage of pregnancy, at the time of assessment. This information shall be used to determine the type and level of treatment or education services needed by the client.

(b) The assessor shall consider the special needs of the client when making the referral.

(6) Requirements for client's case file.

(a) [~~(7)~~] A program shall maintain a case file on each client assessed.

(b) The assessment results and any interview notes or other information pertaining to the assessment shall be maintained in the client's file.

(c) There shall be written documentation in each client's case file of all actions related to any referral to education or treatment services.

(d) Each client file shall contain the Cabinet for Human Resources (CHR) Pamphlet Mental Health Mental Retardation 052 form (PAM MHMR 052). [~~and~~] This form shall be used as a referral notice to transfer a client's records to another program, [~~and~~] as a completion notice to notify the court, the client, the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing, and the division when a client has satisfactorily completed any required services and as a notice of noncompliance to notify the court, the client, and the division when a client fails to satisfactorily complete any required services.

(e)1. [~~(8)~~] CHR Form PAM MHMR 052 is hereby incorporated by reference.

2. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 [~~40621~~] between the hours of 8 a.m. through 4:30 p.m. Eastern time, Monday through Friday.

(7) Case management requirements.

(a) [~~(9)~~] A program providing assessment services, shall maintain case management responsibilities, for every client the program assesses, whether the client receives DUI education or treatment services at the program conducting the assessment, or at another eligible program.

(b) The case management process shall include:

1. The coordination of services provided to each client;

2. The responsibility of communicating with the court such information as the court requests on each client;

3. The responsibility of notifying the court, the client and the division when a client is noncompliant; and

4. The responsibility of notifying the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing [~~Department of Transportation (DOT)~~], the court[~~s~~], the client and the division when a client has satisfactorily completed the required services.

(c) The program shall issue to each client, who has successfully completed the required services, a copy of their completion notice contained in CHR Form PAM MHMR 052, as referred to in Section 3(7) of this administrative regulation [~~subsection (6) of this section~~].

(8) Discontinuing operations of a program. [~~(10)~~] A Program discontinuing operations while still maintaining case management responsibility for a client, shall:

(a) Notify the client in writing;

(b) [~~and shall~~] Refer the client and transfer case management responsibility of the client's case to the program of the client's choice; **and**

(c) [~~. The program discontinuing operations, shall~~] Submit to the division in writing, a list of all clients for whom the program maintains case management responsibility, and a copy of each client's CHR PAM MHMR 052 referral form[~~, as defined in Section 3(7) of this administrative regulation,~~] with the name of the program receiving the client referral listed on the form. [~~transfer the client's case file to the division. The division shall then maintain case management responsibility for the client until the client satisfactorily completes any required services.~~]

Section 7. [5.] Education Requirements. (1) **Program curriculum requirements.**

(a) A program desiring to provide DUI education services, shall:

1. Use a curriculum approved by the division; and

2. Instruction shall be provided by an instructor holding valid certification from the division.

(b) Two (2) levels of DUI education services **shall be provided:**

1. A nine (9) hour basic education course; and

2. A twenty (20) hour early intervention education course shall be provided.

(c) Two (2) nine (9) hour curricula and two (2) twenty (20) hour curricula have been approved by the division.

(d) A program may provide any or all levels of DUI education courses, and may use any or all of the approved curricula.

(e) The maximum number of clients in a class shall be no more than twenty-five (25).

(f) An instruction session shall not exceed three (3) hours per day.

(g) [(a)] The nine (9) hour DUI basic education course shall be for first offenders only and shall consist of a minimum of nine (9) hours of instruction and group interaction. Those first offenders assessed as low risk, not having an alcohol or substance abuse problem requiring treatment, shall be enrolled in a nine (9) hour education course.

(h) [(b)] The twenty (20) hour DUI early intervention education course shall be for first offenders or multiple offenders and shall consist of a minimum of twenty (20) hours of instruction and group interaction. A program may enroll first offenders and multiple offenders in the same session.

(2) The approved curricula are hereby incorporated by reference. Copies of the curricula may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fairoaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 [40621] between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(3) **Program completion required.**

(a) A client shall attend and complete all sessions of class instruction, in the required sequence, and shall comply with all standards of behavior required by the program to satisfactorily complete a DUI education service.

(b) If a client cannot attend a session of class instruction, due to an emergency, the client may be permitted to attend that session of class instruction when the missed class session is repeated.

(c) If a client demonstrates a need for services at a different level of care, the program administrator shall refer the client to any eligible program for the required services, and notify the program, which conducted the assessment of **the** [such] action.

(d) The program administrator shall make the determination as to whether a client has satisfactorily completed the DUI education service, and shall be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required DUI education services, or when a client is noncompliant.

(4) **Fees.** All required fees for an education service shall be paid to the program by the client and such fees shall cover the cost of all course materials.

(5) **Nonresident clients and programs.** A client not residing in the state may receive DUI education services in an out-of-state program that is licensed and eligible as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 8. [6.] Treatment Requirements. (1)(a) A program desiring to provide treatment services shall:

1. Be licensed by the cabinet to provide the services offered;

2. [shall] Conform to the state licensure standards for treatment facilities; and

3. [shall] employ qualified staff members, who have training and experience in dealing with the physical and psychological complications of alcohol and drug dependence.

(b) A program may provide outpatient, intensive outpatient, inpatient, residential or detoxification chemical dependency or substance abuse treatment services.

(c) [(a)] The service a DUI client is assigned depends on the severity of symptoms, available support resources, and individual dynamics to be determined by the assessment. A client may be referred to outpatient, intensive outpatient, inpatient, residential, or detoxification services.

1. A program may provide outpatient or intensive outpatient treatment services to a client individually or in a group. A group may include first and multiple offenders in the same session. The maximum number of clients in a group shall be no more than fifteen (15).

a. A client shall receive a minimum of one (1) hour of individual outpatient treatment each week or a minimum of one and one-half (1 1/2) hours of group outpatient treatment each week. If a client receives outpatient treatment services less than one (1) time each week, to meet the individual clinical needs of the client, the program administrator shall maintain proper documentation in the client's case file to show cause.

b. A client may receive intensive outpatient treatment services, more often, and in longer sessions, each week to meet the individual clinical needs of the client.

2. A client may be referred to a self-help group to supplement but not to replace the outpatient or intensive outpatient treatment services.

(d) [(b)] A client needing more restrictive services than paragraph (a)1a or b of this subsection shall be referred to detoxification, inpatient, residential or transitional living services.

(2) **The treatment plan.**

(a) A program providing DUI treatment services shall be responsible for developing a treatment plan for each client accepted for treatment services.

(b) The treatment plan shall:

1. Be individualized for the needs of each client;

2. [and shall] Include a written statement of treatment goals and measurable objectives together with a realistic time schedule for achieving them;

3. [. The treatment plan shall] Be signed by the client and the clinician.;

4. [A client's treatment plan shall] Be reviewed at least once every 180 days; and

5. All changes [shall be] recorded in the client's case file.

(3) **Attendance and other requirements.**

(a) A client shall comply with all attendance requirements of the treatment plan to satisfactorily complete a required treatment service.

(b) If a client demonstrates a need for service at a different level of care the program administrator shall refer the client to any eligible program for the required services, and notify the program which conducted the client's assessment of such action.

(c) The program administrator shall:

1. Make the determination as to whether a client has satisfactorily completed the treatment service; and

2. [shall] Be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required treatment services, or when a client is noncompliant.

(4) **Fees.** All required fees for treatment services shall be paid to the program by the client.

(5) **Out-of-state treatment.** Any client may receive treatment services at an out-of-state program that is licensed, and eligible, as determined by the division, based on the standards in this regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.

Section 9. [7.] Hearing Requirements. (1) Any program or individual may appeal negative certification action taken by the division by notifying the division to revoke, modify, suspend or deny certification or recertification of a DUI program, assessor, or instructor, in writing within twenty (20) days of the issuance of notice of negative certification action. Upon receipt of notice of appeal, the director of the division shall designate a hearing officer to conduct a hearing and make a recommendation to the division.

(2) Notice of hearing shall be mailed to the program or individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative certification action. The notice of hearing shall be mailed by certified mail, return receipt requested to the parties.

(3) The program, individual and the division may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions or witnesses, who for good cause shown, cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.

(4) All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) The hearing officer shall send a written determination to the division including findings of fact and conclusion of law. With the determination, the hearing officer shall forward to the division the record consisting of all documents, exhibits, and recorded testimony introduced in the hearing.

(7) The division shall issue the hearing officer's final determination of certification status within ten (10) days of receipt of the determination from the hearing officer.

(8) No hearing officer shall participate in any hearing involving a program or individual with which the hearing officer has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

(9) The division shall retain all records related to a hearing for a period of five (5) years.

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: May 6, 1993
FILED WITH LRC: May 6, 1993 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR COMMENTS RECEIVED

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amended After Hearing)

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 1. ~~[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. **This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.**

(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 2. ~~[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 1 ~~[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 **3.** **[~~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 **1** **[~~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 **4.** **[~~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 **5.** **[~~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: June 11, 1993 at 9 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Amended After Hearing)

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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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:**180** **[~~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: June 4, 1993

FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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 **4:020** **[~~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 **through twenty-one (21)** **[~~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 **through twenty-one (21)** **[~~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 **4:020** **[~~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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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 **thirty-six (36) months** [~~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.

(c) If a child or youth was receiving specially designed instruction and related services in another state and enrolls, the enrolling agency shall implement the IEP from the previous LEA pursuant to the requirements for placement for temporary services.

(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.

(f) A surrogate parent shall not be considered an employee of the Cabinet for Human Resources solely because he is paid by that agency to serve as a foster parent of the child.

(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) **working** **[**~~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 **substantially** 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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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**s**" mean**[s]** 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. **(1)** 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 **submit** **[**~~complete~~**]** a written referral **to a designated LEA representative.** **[**~~that meets the following criteria:~~**]**

(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) Each written referral shall include:

1. Personally identifiable data including name, parent, address, and date of birth;

2. Current status, including all areas of concern with regard to the child or youth in relation to his similar age peers;

3. Current screening data collected according to the LEA's board policies and procedures as required under KRS 158.6451 and 704 KAR 3:006;

4. 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.

(b) If referral information is incomplete, additional information shall be collected.

(c) If referral information is complete, the ARC shall determine the need to initiate a full and individual evaluation.

(d) 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. **[**~~(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 **examine the child's current status in the following areas to** 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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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. **(1)** 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.

(2) The LEA shall provide these services:

(a) Directly through the creation or expansion of the LEA's own staff resources; or

(b) Indirectly by contracting with another public or private agencies, or through other arrangements. [~~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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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 a 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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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 **meet** **[~~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				
Primary-8 [~~Elem. K-8~~]	15	4 Years	NA	NA
Sec. 7-12	15	4 Years	NA	NA
Resource Class				
Primary-8 [~~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				
Primary-8 [~~Elem. K-8~~]	10	4 Years	NA	NA
Sec. 7-12	15	4 Years	NA	NA
Resource Class				
Primary-8 [~~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

(3) [~~(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.

(4) [~~(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.

(5) [~~(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.

(6) [~~(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 **that** 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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Amended After Hearing)

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 **unilaterally** 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: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS **214.175,** 216B.010 to 216B.130, 216B.107, 216B.990(1), (2)**, Chapter 310, 311.241 to 311.247, 311.990**
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 **or registry-eligible** [~~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 **administrative** 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 **the** **[**~~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. **These** **[**~~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. 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.

(b) Skin testing shall not be [~~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.

c. Two (2) step skin testing **shall be** [~~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.

d. All staff who have never had a skin test of ten (10) or more millimeters induration **shall** [~~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, **shall** [~~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 **administrative** 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.

I. 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) **A** **[~~No~~]** patient with impending or declared brain death **[~~and/~~]**or cardiopulmonary death as determined pursuant to KRS 446.400 should **not** 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~~**]** Medications or treatments shall **not** be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to **a** licensed practical or registered nurse**[**~~s~~**]** 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. **Patient restraints or protective devices, other than bed rails, shall not be used** **[**~~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 **or registry-eligible** **[**~~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 **administrative** 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 maintain-

ing 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: June 2, 1993
FILED WITH LRC: June 3, 1993 at 3 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 1993

DEPARTMENT OF LOCAL GOVERNMENT
(Proposed Amendment)

109 KAR 10:010. Local government economic assistance fund grants.

RELATES TO: KRS 42.450 to 42.495
STATUTORY AUTHORITY: KRS 42.455(5)
NECESSITY AND FUNCTION: As directed by KRS 42.455(5) the Department of Local Government, by this regulation, establishes requirements relating to implementation of a system of grants from the Local Government Economic Assistance Fund ("Fund") and, in addition, sets forth procedures for reporting with respect to Fund grants to the Department of Local Government as required by statute.

Section 1. "Local government," "local government unit," "recipient government" means the fiscal courts of coal-producing, coal-impact and mineral-producing counties, and the governing bodies of incorporated cities within such counties who may be eligible for fund grants.

Section 2. Budget Hearings. Each fiscal year, any recipient local government that proposes to expend money from the fund in any fiscal year shall hold at least one (1) public hearing on specific proposed projects the government intends to fund (hereafter referred to as the budget hearing).

(1) At the budget hearing, all citizens of the recipient local government shall have a reasonable opportunity to provide written and oral comments, and to ask questions concerning the allocation of local government assistance funds.

(2) At least seven (7) days prior to the budget hearing the recipient local government shall make available for public inspection during normal business hours, at the principal office of the local government, a summary of the proposed expenditures from the fund. This summary shall be submitted as a part of the county's annual budget to the Department of Local Government. This summary shall identify each expenditure according to eligible categories and the amount of money to be allocated to each category.

(3) A notice of the budget hearing shall be published in a newspaper of general circulation serving the geographic area of the recipient local government no later than seven (7) but not more than twenty-one (21) days prior to the scheduled date of the hearing. The notice shall contain the following: Date, place and time of the public budget hearing; a statement of the amount anticipated from the fund for the fiscal year; the amount of such funds to be expended in each eligible category; a statement advising when and where a summary of projects and a summary of the entire budget for all income and expenditures of the recipient government is available for public inspection; a statement that citizens attending the public budget hearing have the right to provide written and/or oral comments and ask questions concerning the allocation of local government assistance funds.

(4) The public budget hearing may be held concurrently with budget hearings of the recipient local government provided the notice specifically identifies the fund and includes all information required by subsection (3) of this section.

Section 3. Annual Use Report. Each local government that receives grant money from the fund shall file an annual report with the Department of Local Government within sixty (60) days after the end of the fiscal year in which the funds were received. The annual use report shall be certified by the chief executive official and contain a statement that the recipient government's general tax effort has not been reduced below the level of fiscal year 1991-1992 [~~1980~~].

Section 4. Records. The Department of Local Government shall require that the generally accepted governmental auditing standards issued by the comptroller general of the United States be used by each recipient unit of local government required to submit an audit report to the Department of Local Government under provisions of KRS 42.460.

(1) If an acceptable audit report has not been submitted to the Department of Local Government, additional funds from the fund may be transferred to the local government unit for a period not to exceed eighteen (18) months after the end of the fiscal year.

(2) Each recipient government shall maintain a separate financial account for the receipt of any funds from the fund. Any expenditures or transfers shall be made from this account. Financial records shall include all earnings from investment of funds in accordance with KRS 42.455(4).

BRUCE FERGUSON, Commissioner
APPROVED BY AGENCY: May 17, 1993
FILED WITH LRC: May 17, 1993 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, July 22, 1993, at 10 a.m. at 1024 Capital Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, July 17, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written requests for a transcript is made. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dan Tuttle, Assistant Director, County & Municipal Accounting Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Dan Tuttle
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: No change from existing regulation.
(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: No change
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Proposed amendments reflects statutory change.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None
TIERING: Is tiering applied? Not applied, not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No__ If yes, complete questions 2-4.
(2) State what unit, part or division of local government this administrative regulation will affect. Each city and county receiving local government economic assistance funds.
(3) State the aspect or service of local government to which this administrative regulation relates. Taxing effort and audit reports.
(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. More
Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, ~~[350.110,]~~ 350.130, 350.131, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.50, 917, 30 USC 1253, 1255
STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.50, 917, 30 USC 1253, 1255
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This administrative regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This administrative regulation sets forth that certain violations of KRS Chapter 350 and administrative regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This administrative regulation sets forth that a hearing may be requested before ~~[such]~~ forfeiture can be effected. This administrative regulation ~~[also]~~ specifies a method to determine the amount of bond forfeiture. This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this administrative regulation.
(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.
(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform the ~~[said]~~ measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) If ~~[In the event]~~ forfeiture of the bond is required by Section 3 of this regulation, the cabinet shall:
(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;
(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 405 KAR 7:092, Section 9; and
(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.
(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 405 KAR 7:092, Section 5.
(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. The ~~[Such]~~ funds shall be deposited in an appropriate account for the payment of these ~~[such]~~ costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the ~~[such]~~ proceeds under state law.
(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.
(5) Return of unused forfeited bond funds for interim or permanent program permit area overlapped by permanent program permit area. If the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapter 1 or 3 for which the bond was forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area is entirely contained within the permit area of a subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet shall retain the funds from the forfeited bond until the entire overlapped permit area has been disturbed by the overlapping permittee and then shall return the unused funds to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set off the proceeds under state law.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:
(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;
(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or Title 405, Chapters 7 through 24 within the time required;
(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or
(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this regulation.
(2) A bond may be forfeited if the cabinet finds that:
(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (if [where] all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) If [Where] a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 11, 1993
FILED WITH LRC: June 11, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EDT) Thursday, July 29, 1993 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by July 24, 1993. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by July 24, 1993, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on July 29, 1993. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This administrative regulation governs forfeiture of bonds for surface coal mining operations that have failed to reclaim the land in the manner required by law, administrative regulations, and the permit. Ordinarily, the cabinet uses the forfeited funds to reclaim the site and, under KRS 350.131(2) and 405 KAR 10:050 Section 2(3), must then return any excess funds to the person from whom they were received, subject to the cabinet's right to attach or set-off the proceeds under other state laws. Occasionally, reclamation of a forfeited site is accomplished not by the cabinet, but by a subsequent permittee whose permit area overlaps the forfeited site. At present, the cabinet will not return forfeited bond funds for an overlapped site unless it has been completely reclaimed by the overlapping permittee and his performance bond has been fully released. However, the cabinet now proposes to change this procedure because the cabinet believes that, after the overlapping permittee has become liable for the forfeited site under his bond by virtue of his disturbing the entire site, there is no longer a need for the cabinet to retain the forfeited bond funds to assure reclamation of the site. This proposed amendment requires in new Section 2(5) that the cabinet return unused forfeited bond funds to the person from whom they were received, subject to the cabinet's right to attach or set-off the funds under state law, if the cabinet has not completed the reclamation plan on the forfeited site and the site is completely overlapped by a subsequent permanent program permit and is completely disturbed by the overlapping permittee. To be consistent with KRS 350.131, this provision is limited to interim program sites forfeited on or after July 15, 1988 and to forfeited permanent program sites. Thus, the proposed amendment potentially affects those persons from whom the forfeiture proceeds were received, because all or part of the forfeited bond funds may be returned to them in the circumstances described above. These persons may be surety companies, financial institutions, permittees, or other persons. About 100 forfeited sites have been overlapped, but not all will become eligible for bond returns, due to the limitations described above. This proposed amendment also revises Section 2(4) so that the permittee or operator, rather than just the operator, shall be liable for the additional cost necessary to achieve reclamation if the amount of the forfeited bond is insufficient to pay the full cost of reclamation. This is appropriate because the permittee has an obligation to reclaim lands disturbed under the permit. In many cases the permittee and operator are the same person, and in these cases the proposed revision to Section 2(4) will have no net effect. In cases where the permittee and operator are different persons, this revision will affect the permittee by making him also liable for additional reclamation costs, if any.

(a) Direct and indirect costs or savings to those affected:

1. First year: The extension of liability for excess reclamation costs under Section 2(4) to include the permittee will create a potential direct cost to the permittee, that will be realized only when there actually are excess costs at a forfeited site where the permittee and operator are different persons, and the amount will be completely case specific. The return of unused funds under Section 2(5) will not create any direct or indirect costs to sureties or other persons from whom forfeiture proceeds are collected, or to any other regulated entities. The return of unused forfeited funds will constitute a direct savings to persons to whom the funds are returned. The amount of the savings will range from zero to the full amount of the forfeited bond, and will be completely case specific.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs and no effects upon competition.

(b) Reporting and paperwork requirements: These amendments will not affect reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The revision to Section 2(4) will produce no direct or indirect cost or savings to the cabinet. The return of unused bond funds under Section 2(5) will produce a direct loss of funds equal to the amount returned. However, since KRS Chapter 350 does not authorize the cabinet to use forfeited bond funds (except funds from

interim and preinterim sites forfeited prior to July 15, 1988) for any purpose other than to reclaim the specific sites for which they were forfeited, loss of these funds will not adversely affect any current programs of the cabinet.

2. Continuing costs or savings: Bond returns may rise in succeeding years as sureties and other bond providers actively promote overlapping in order to obtain return of forfeited funds.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The proposed amendments will not increase reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on revenues except as described in (2)(a) above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered using Phase I bond release for the overlapping permittee, rather than complete disturbance of the forfeited site by the overlapping permittee, to trigger the return of funds under Section 2(5). This would have provided a more precise time, but was rejected because it would have delayed return of forfeited funds without substantially increasing the level of assurance that the site would be reclaimed. The cabinet also considered requiring the overlapping permittee to sign a statement accepting full liability for the forfeited site, but this was determined to be unnecessary since the overlapping permittee's complete disturbance of the forfeited site is sufficient to make him fully liable for reclamation of the site.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are 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: No additional comments.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255; 30 CFR Parts 730-733, 735, 800.50, 917.

2. State compliance standards. This proposed amendment revises Section 2(4) so that the permittee or operator, rather than just the operator, shall be liable for the additional cost necessary to achieve reclamation if the amount of the forfeited bond is insufficient to pay the full cost of reclamation. At new Section 2(5) this proposed amendment requires that the cabinet return unused forfeited bond funds to the person from whom they were received, subject to the cabinet's right to attach or set-off the funds under other state laws, if the cabinet has not completed the reclamation plan on the forfeited site and the site is completely overlapped by a subsequent permanent program permit and is completely disturbed by the overlapping permittee. To be consistent with KRS 350.131, this provision is limited to interim program sites forfeited on or after July 15, 1988 and to forfeited permanent program sites.

3. Minimum or uniform standards contained in the federal mandate. 30 CFR 800.50(d)(1) provides that in the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The regulatory authority may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited. There is no direct federal counterpart to the proposed 405 KAR 8:050 Section 2(5).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendments impose different requirements than the federal mandate. 30 CFR 800.50(d)(1) differs from proposed 405 KAR 10:050 Section 2(4) in that the federal regulation places the liability for excess reclamation costs on the operator, whereas the proposed Kentucky amendment places that liability on the permittee or operator. Thus the federal and state requirements differ in those cases where the permittee and the operator are not the same person. There is no direct federal counterpart to the proposed 405 KAR 8:050 Section 2(5). 30 CFR 800.50(d)(2), like KRS 350.131(2) and 405 KAR 10:050 Section 2(3), provides that in the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the regulatory authority to the party from whom they were collected. The current federal and Kentucky requirements address the return of excess forfeited bond funds, but do not specifically address return of bond funds when reclamation is performed by an overlapping permittee.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The cabinet believes it is appropriate that the permittee have liability for reclamation costs in excess of the bond amount, because the permittee has an obligation to reclaim land disturbed under his permit. The cabinet believes that return of unused forfeited bond funds when there is other bond to assure that reclamation will be achieved under subsequent overlapping permits, is consistent with 30 CFR 800.50(d)(2) and constitutes a valid state interpretation of that federal regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 12:001. Definitions for 405 KAR Chapter 12.

RELATES TO: KRS Chapter 350, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 12.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse

banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(3) "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(4) "Cabinet" is defined in KRS 350.010.

(5) "CFR" means Code of Federal Regulations.

(6) "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(7) "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(8) "Day" means calendar day unless otherwise specified to be a working day.

(9) "Department" means the Department for Surface Mining Reclamation and Enforcement.

(10) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(11) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(12) "KAR" means Kentucky administrative regulations.

(13) "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(14) "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(15) "Operations" is defined in KRS 350.010.

(16) "Operator" is defined in KRS 350.010.

(17) "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(18) "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(19) "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(20) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(21) "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(22) "Person" is defined in KRS 350.010.

(23) "Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations, or by any related action of the cabinet.

(24) "Reclamation" is defined in KRS 350.010.

(25) "Secretary" is defined in KRS 350.010.

(26) "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(27) "Surface coal mining and reclamation operations" is defined

in KRS 350.010.

(28) "Surface coal mining operations" is defined in KRS 350.010.

(29) "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(30) "Wilfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 11, 1993
FILED WITH LRC: June 11, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EDT) Thursday, July 29, 1993 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by July 24, 1993. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by July 24, 1993, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on July 29, 1993. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This administrative regulation applies to surface coal mining and reclamation operations and coal exploration operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in Kentucky. The regulation affects these operations, and also affects owners of mined land, adjacent landowners, and the general public in the coal producing regions that may be impacted by mining operations. This administrative regulation defines terms used in 405 KAR Chapter 12. This amendment adds definitions of "unwarranted failure to comply," and "willfully" and "willful violation." These definitions are needed in Chapter 12 because "unwarranted failure" and "willful violations" are used in 405 KAR 12:020 Section 8, pertaining to suspension or revocation of a permit because of a pattern of violations. These definitions are the same as in 405 KAR 7:001, 8:001, and 10:001, the definitions regulations for the other chapters of 405 KAR in which these terms are used pertaining to the permanent regulatory program for surface coal mining and reclamation operations.

(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect cost to those affected.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The proposed definitions are the same as in other chapters of 405 KAR pertaining to the permanent regulatory program for surface coal mining operations.

(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: 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: 405 KAR 12:020 Section 8, pertaining to suspension or revocation of a permit for a pattern of violations, was added to that regulation in November 1992, when those provisions were moved from 405 KAR 7:090, which was being repealed. The cabinet simply overlooked the need to add these definitions to 405 KAR 12:001 at that time, and now proposes to add them.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917; 30 USC 1253, 1255, 1291.

2. State compliance standards. This administrative regulation defines terms used in 405 KAR Chapter 12. This amendment adds definitions of "unwarranted failure to comply," and "willfully" and "willful violation." These definitions are needed in Chapter 12 because "unwarranted failure" and "willful violations" are used in 405 KAR 12:020 Section 8, pertaining to suspension or revocation of a permit because of a pattern of violations. These definitions are the same as in 405 KAR 7:001, 8:001, and 10:001, the definitions regulations for the other chapters of 405 KAR in which these terms are used pertaining to the permanent regulatory program for surface coal mining and reclamation operations.

3. Minimum or uniform standards contained in the federal mandate. The federal surface mining regulations provide definitions that are substantially the same or similar to the definitions in this administrative regulation. "Willful violation" and "unwarranted failure to comply," as applied in 30 CFR 843.13 pertaining to suspension or revocation of a permit for a pattern of violations, are defined at 30 CFR 843.5. These federal definitions achieve the same result when applied in 30 CFR 843.13 that the proposed definitions would achieve when applied in 405 KAR 12:020 Section 8.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 12:010. General provisions for inspection and enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 CFR Parts 730-733, 735, 840.11-.16, 917, 30 USC 1253, 1255, 1267

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.130, 350.465, 30 CFR Parts 730-733, 735, 840.11-.16, 917, 30 USC 1253, 1255, 1267

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to rigidly enforce administrative regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This administrative regulation generally sets forth a rigid enforcement and inspection policy for the cabinet. This administrative regulation directs that inspections be made at irregular intervals and without need of a warrant or prior notice to the permittee, operator, or person. This administrative regulation requires certain frequencies for inspections and complete preservation of the evidence, records and observations made during inspections. This administrative regulation also sets forth the general policy of public participation in the enforcement process and references the civil and criminal penalties of KRS Chapter 350.

Section 1. Applicability. The provisions of this chapter shall apply to all surface coal mining and reclamation operations and coal exploration and reclamation operations.

Section 2. Inspection and Enforcement. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted [~~such~~] inspections, studies, investigations, or other determinations as it deems reasonable and necessary to obtain information and evidence with which to ensure that surface coal mining and reclamation operations and coal exploration and reclamation operations are conducted in accordance with the provisions of KRS Chapter 350; Title 405, Chapters 7 through 24; and all terms and conditions of the applicable permit or approval.

Section 3. Timing and Conduct of Inspections. (1) Right of entry and access. Authorized representatives of the cabinet shall:

(a) Have unrestricted right of entry and access to areas affected by coal exploration and reclamation operations and areas affected by surface coal mining and reclamation operations for any purpose associated with their proper duties pursuant to KRS Chapter 350 or KAR Title 405 including but not limited to activities associated with the conducting [~~conductance~~] of inspections; and

(b) At reasonable times and without delay, have unrestricted access to and authority to copy any records required to be kept under KRS Chapter 350 and KAR Title 405 and have unrestricted access to, for the purpose of inspecting, any monitoring equipment required under or pursuant to KRS Chapter 350 or KAR Title 405.

(2) Presentation of credentials. Authorized representatives of the cabinet shall present credentials for identification purposes upon request by a representative of the permittee, operator or [~~the~~] person conducting the coal exploration and reclamation operations on the affected area.

(3) Prior notice. The cabinet shall have no obligation to give prior notice that an inspection will be conducted.

(4) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays if [~~when~~] the cabinet deems the [~~such~~] inspections necessary to properly monitor compliance with KRS Chapter 350; Title 405, Chapters 7 through 24; and terms and conditions of the applicable permit or approval.

(5) Frequency of inspections.

(a) Partial inspections of surface coal mining and reclamation operations. A partial inspection of surface coal mining and reclamation operations is an on-site or aerial review of a permittee, operator, or person's [~~permittee's~~] compliance with some of the permit terms and conditions and some of the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24. Unless the cabinet has received notice of temporary cessation under 405 KAR 16:010, Section 7, or 405 KAR 18:010, Section 15, the cabinet shall conduct an average of at least one (1) partial inspection per month of each area affected by surface coal mining and reclamation operations permitted under Title 405, Chapter 8 at least until phase I reclamation, as determined under [~~defined in~~] 405 KAR 10:040, has been completed on the entire permit area. After phase I reclamation, or if the cabinet has received notice of temporary cessation, the cabinet shall conduct [~~continue such~~] partial inspections until the cabinet determines that the permit area is sufficiently stable with respect to mass stability, erosion, revegetation, water quality and other reclamation requirements so that the quarterly complete inspections required under paragraph (b) of this subsection will provide adequate inspection of the permit area.

(b) Complete inspections of surface coal mining and reclamation operations. A complete inspection of surface coal mining and reclamation operations is an on-site review of a permittee, operator, or person's [~~permittee's~~] compliance with all of the permit terms and conditions and all of the requirements of KRS Chapter 350 and Title 405, Chapters 7 through 24 within the entire area disturbed or affected by surface coal mining and reclamation operations. The cabinet shall conduct an average of at least one (1) complete inspection per calendar quarter of each area affected by surface coal mining and reclamation operations permitted under Title 405, Chapter 8.

(c) The cabinet shall conduct inspections of coal exploration and reclamation operations as necessary to ensure compliance with KRS Chapter 350 and Title 405, Chapters 7 through 24.

(6) Aerial inspections.

(a) Aerial inspections shall be conducted in a manner that reasonably insures the identification and documentation of conditions at each surface coal mining and reclamation site and each coal exploration and reclamation site inspected.

(b) Any potential violation observed during an aerial inspection shall be investigated on site within three (3) days provided that any indication of a condition, practice, or violation constituting cause for the issuance of a cessation order under 405 KAR 12:020, Section 3(1)(b) and (c) shall be investigated on site immediately and provided further that an aerial inspection which necessitates an on-site inspection of a potential violation shall not be considered to be an additional partial inspection for the purposes of subsection (5) of the section.

Section 4. Records of Inspections. (1) Authorized representatives of the cabinet shall make and maintain written records of inspections and other activities including observations made and factual matters discovered. A copy of the [~~such~~] records shall be made available to the permittee, operator, or [~~the~~] person conducting the coal exploration and reclamation operations and shall be available for public inspection at the appropriate regional office of the department in accordance with the Kentucky Open Record Laws, KRS 61.870

through KRS 61.884, until at least five (5) years after final bond release on the entire permit area or until at least five (5) years after bond forfeiture. For unpermitted areas, the cabinet shall maintain the [~~such~~] records until at least five (5) years after the final action of the cabinet regarding the operations.

(2)(a) For permitted areas for which final bond release has been granted pursuant to Title 405, Chapter 10; for areas for which bond has been forfeited pursuant to Title 405, Chapter 10; and for unpermitted areas for which the cabinet has taken final action, the cabinet may, at its own option and expense and as an alternative to maintaining the information for public inspection at the location identified in accordance with subsection (1) of this section, retain information at a location other than the department's appropriate regional office and, at the request of any person:

1. Provide copies of the information promptly by mail to the [~~such~~] person; or

2. Transfer the information to the department's appropriate regional office for public inspection.

(b) For situations in which the cabinet provides information in accordance with this subsection, the cabinet shall maintain, for public inspection at the department's appropriate regional office, a description of the information available for mailing or submission to the appropriate regional office and the procedures to be used for obtaining the [~~such~~] information.

(3) Upon inspection of coal exploration and reclamation operations and surface coal mining and reclamation operations, authorized representatives of the cabinet shall collect evidence of every observed violation of a permit term or condition, every observed violation of a term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval), and every observed violation of a requirement of KRS Chapter 350 or administrative [a] regulation promulgated pursuant thereto.

(4) The cabinet shall preserve evidence collected pursuant to subsection (3) of this section where appropriate in order that the [~~such~~] evidence may be presented at hearings held pursuant to 405 KAR 7:092.

Section 5. Penalties and Sanctions. Any person who violates any provision of KRS Chapter 350; any provision of Title 405, Chapters 7 through 24; any permit term or condition; or any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval) and any person who fails to perform the duties imposed by these [~~such~~] provisions or who fails to comply with a determination or order of the cabinet pursuant to these [~~such~~] provisions shall be subject to civil and criminal penalties as set forth in KRS 350.465(3)(h), KRS 350.990, 405 KAR 7:092, and any other applicable provision of law and shall be subject to applicable sanctions as set forth in KRS 350.130 or any other applicable provision of law. Violations by any person conducting surface coal mining and reclamation operations on behalf of a permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. Violations by any person conducting coal exploration and reclamation operations shall be attributed to the person conducting the coal exploration and reclamation operations or the person identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020, unless the [~~such~~] person establishes that they were acts of deliberate sabotage.

Section 6. Public Participation. Any person shall have the opportunity to request an inspection and to participate in enforcement actions of the cabinet as provided in 405 KAR 12:030.

Section 7. Formal Review. Any person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order may request review of that action pursuant to 405 KAR 7:092. The filing of a request for a hearing shall not operate as a stay of any notice or order or any modification, termination, or vacation thereof.

JUDITH A. VILLINES, Commissioner
PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 11, 1993
FILED WITH LRC: June 11, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EDT) Thursday, July 29, 1993 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by July 24, 1993. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by July 24, 1993, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on July 29, 1993. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601 (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: This administrative regulation applies to surface coal mining and reclamation operations and coal exploration operations. There are approximately 3800 surface coal mining operations and approximately 500 coal exploration operations in Kentucky. The regulation affects these operations, and also affects owners of mined land, adjacent landowners, and the general public in the coal producing regions that may be impacted by mining operations. This administrative regulation establishes general provisions and procedures for inspection and enforcement. The proposed amendment provides that if the cabinet has received notice that the operations are in temporary cessation, the cabinet may cease to conduct partial inspections if it determines the area is sufficiently stable that the required quarterly complete inspections will provide adequate inspection of the area. The proposed amendment is consistent with current inspection practices of the cabinet. This amendment inserts the words "permittee, operator, or person" at appropriate locations to reflect changes that were made throughout KRS Chapter 350 in 1990 to clarify the responsibilities of these entities. This amendment also makes several minor changes in wording, mostly to comply with the format requirements of KRS Chapter 13A.

(a) Direct and indirect costs or savings to those affected: There will be no direct or 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: There will be

no effects upon the cabinet, since the principal change in the amendment is consistent with current inspection practices of the cabinet.

(a) Direct and indirect costs or savings: There will be no direct or indirect costs or savings to the cabinet.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The proposed amendment regarding reduced inspection frequency on sites with temporary cessation is consistent with the corresponding federal regulation. The U.S. Office of Surface Mining has no objection to the cabinet's current practice of reducing inspection frequency on such sites, because the practice is consistent with the corresponding federal regulation. However, OSM has suggested that the Kentucky regulation be changed so it will be consistent with the federal regulation on temporary cessation sites.

(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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR Parts 730-733, 735, 840.11-.16, 917; 30 USC 1253, 1255, 1267.

2. State compliance standards. This administrative regulation establishes general provisions and procedures for inspection and enforcement. Section 3(5)(a) requires the cabinet to conduct an average of at least one partial inspection per month of each surface coal mining and reclamation operation, at least until Phase I reclamation has been achieved on the entire permit area. After Phase I reclamation, the cabinet must continue monthly partial inspections until the cabinet determines the area has become sufficiently stable that the quarterly complete inspections required under Section 3(5)(b) will provide adequate inspection of the area. Under the proposed amendment, if the cabinet has received notice that the operations are in temporary cessation, the cabinet may cease to conduct partial inspections if it determines the area is sufficiently stable that the quarterly complete inspections required under Section 3(5)(b) will provide adequate inspection of the area. The proposed amendment is consistent with current inspection practices of the cabinet.

3. Minimum or uniform standards contained in the federal mandate. Under 30 CFR 840.11(a) state regulatory authorities must conduct an average of at least one partial inspection per month on each active surface coal mining and reclamation operation, and must conduct such partial inspections of each inactive operation as are necessary to ensure effective enforcement of the federally approved state program. At 30 CFR 840.11(f) an inactive operation is one for which: (1) the state regulatory authority has secured the required written notice of temporary cessation from the permittee; or, (2) Phase II reclamation has been completed and the permittee's bond liability has been reduced.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment regarding temporary cessation sites is equivalent to the federal mandate and will not impose stricter requirements. The U.S. Office of Surface Mining recognizes that the cabinet's current practice of reducing inspection frequency on temporary cessation sites is consistent with the federal regulation, and has suggested that the state regulation be changed to match the federal regulation on these sites.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised June 15, [~~February 14,~~] 1993, are incorporated by reference and shall be referred to as Corrections Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Kentucky Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

1.1	Legal Assistance for Corrections Staff
1.2	News Media
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen
2.2	Warden's Fund
2.10	Surplus Property
[~~03-01-01 Code of Ethics (Deleted 6/15/93)~~]	
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
6.1	Open Records Law
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.4	Emergency Preparedness
9.1	Use of Force
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.6	Contraband
9.7	Storage, Issue and Use of Weapons Including Chemical Agents
9.8	Search Policy
9.9	Transportation of Inmates
9.10	Security Inspections
9.11	Tool Control
9.18	Informants
9.19	Found Lost or Abandoned Property

10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
11.2 Nutritional Adequacy of the Diet for Inmates
11.3 Special Diet Procedures
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
13.6 Sex Offender Treatment Program
13.9 Dental Services
14.2 Personal Hygiene Items
14.3 Marriage of Inmates
14-04-01 Legal Services Program
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time [~~(Amended 2/14/93)~~]
15-05-01 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
15.7 Inmate Account Restriction
16.1 Inmate Visits
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17-01-01 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers
18-10-01 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
19.3 Inmate Wage Program (Amended 6/15/93)
20.1 Educational Programs and Educational Good Time
[~~20-01-01~~] (Amended 6/15/93)
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-08-01 Use of Force
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee
27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13 Community Service Work
27-12-14 Client Travel Restrictions
27-13-01 Drug and Alcohol Testing of Offenders (Added 6/15/93)
27-13-02 Alcohol Detection
27-14-01 Interstate Compact Transfers
27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
27-15-01 Supervision Report; Violations, Unusual Incidents
27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01 Absconder Procedures
27-18-01 Probation and Parole Issuance of Detainer/Warrant
27-19-01 Preliminary Revocation Hearing
27-20-01 Division of Probation and Parole Controlled Intake Program
27-20-02 Prisoner Intake Notification
27-20-03 Prisoner Status Change
27-21-01 Apprehension and Transportation of Probation and Parole Violators
27-22-01 Fugitive Unit - Apprehensions
27-22-02 Fugitive Unit - Transportation of Fugitives
27-23-01 In-state Transfer
27-24-01 Closing Supervision Report
27-24-02 Reinstatement of Clients to Active Supervision
27-25-01 Application for Final Discharge from Parole
27-26-01 Assistance to Former Clients and Dischargees
27-27-01 Restoration of Civil Rights
27-28-01 Firearms/Explosives: Application for Relief from Disability
27-29-01 Parole Review Dates Modification
28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
28-02-01 Expedient Release Program

28-03-01 Parole Plans/Halfway Houses/Extended Fur+lough/ Sponsorship/Gradual Release
28-04-01 Furlough Verifications
28-05-01 Out-of-state Investigations.

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: June 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601 or Louis Smith, Office of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 2,948 employees of the Department of Corrections, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. All policies are administered in a uniform manner and because the regulation applies equally to all employees, inmates, parolees and visitors. Disparate treatment of any of these classes may produce complaints by that class and could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be violated as well as Sections 2 and 3 of the Kentucky Constitution which prohibit unequal or arbitrary treatment of persons.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised June 15 [~~May 14~~], 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 01-00-15 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
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 (Amended 6/15/93)
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 (Amended 6/15/93)
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 [(~~Amended 5/14/93~~)]
KSR 13-00-05	Medical Records [(~~Amended 5/14/93~~)]
KSR 13-00-08	Institutional Laboratory Procedures [(~~Amended 5/14/93~~)]
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation [(~~Amended 5/14/93~~)]
KSR 13-00-12	Vision Care/Optometry Services [(~~Amended 5/14/93~~)]
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System [(~~Amended 5/14/93~~)]
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
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-02	Lawn Visit Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 529 employees of the Kentucky State Reformatory, 1389 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the 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. This administrative regulation is in conformity with those provisions.

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

WKCC 02-01-01	Inmate Funds
WKCC 02-01-02	Inmate Canteen
WKCC 02-00-03	Invoice and Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds
WKCC 02-02-01	Agency Funds and Accounting Procedures
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse and Alcohol Testing [~~(Amended 3/15/93)~~]
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04	Food Service Security
WKCC 11-00-05	Food Service General Guidelines
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing
WKCC 13-00-01	Special Health Programs
WKCC 13-01-01	Use of Pharmaceutical Products
WKCC 13-02-01	Health Care Services
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure
WKCC 15-01-01	Hair and Grooming Standards
WKCC 15-03-01	Meritorious Good Time
WKCC 15-05-01	Restoration of Forfeited Good Time
WKCC 16-01-01	Visiting Policy and Procedures
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 20-01-01	Education Program
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs and Organizations
WKCC 23-00-01	Religious Services
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs (Amended 6/15/93)

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and William Seabold, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 143 employees of the Western Kentucky Correctional Complex, 408 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 implementa-

tion of the regulations are included in the operational budget.

2. Continuing costs or savings: Same as 2(a)1.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439

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

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised June 15 [~~May 14~~], 1993 are incorporated by reference and shall be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

BCFC 01-02-01	Organization and Assignment of Responsibility
BCFC 01-04-02	Extraordinary Occurrence Procedure
BCFC 01-05-01	Procedures Office: Duties and Responsibilities
BCFC 01-08-01	Public Information and Inmate Access to News Media
BCFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01	Institutional Duty Officer's Responsibilities
BCFC 02-01-02	Fiscal Management: Accounting Procedures
BCFC 02-01-03	Fiscal Management: Agency Funds
BCFC 02-01-04	Fiscal Management: Insurance
BCFC 02-01-05	Fiscal Management: Budget
BCFC 02-01-06	Fiscal Management: Audit
BCFC 02-02-01	Inmate Accounts
BCFC 02-02-02	Inmate Control of Personal Funds
BCFC 02-02-03	Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01	Purchase Orders
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 04-01-01	Employee Training and Development
BCFC 05-01-01	Information System
BCFC 06-01-01	Offender Records
BCFC 06-02-01	Storage of Expunged Records
BCFC 06-03-01	Court Trips
BCFC 06-03-02	Receipt of Order of Appearance
BCFC 07-04-01	Smoking Control
BCFC 08-02-01	Fire Prevention
BCFC 08-03-01	Fire Procedures
BCFC 08-03-02	Fire Extinguishers and Their Use
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02	OSHA Hazard Communication Program
BCFC 09-06-01	Search Policy/Disposition of Contraband
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area
BCFC 10-01-01	Special Management Inmates
BCFC 11-01-01	Food Services: General Guidelines
BCFC 11-02-01	Food Service: Security
BCFC 11-03-01	Dining Room Guidelines
BCFC 11-04-01	Food Service: Meals
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02	Health Requirements of Food Handlers
BCFC 11-06-01	Food Service: Inspection and Sanitation
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01	Staff/Visitor Meals
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02	Barbershop Services and Equipment Control
BCFC 12-04-01	Institutional Inspections
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01	Pest Control
BCFC 13-01-01	Organization of Health Services
BCFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01	Dental Policy/Sick Call
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01	Licensure and Training Standards
BCFC 13-06-01	Suicide Prevention and Intervention Program
BCFC 13-06-02	First Aid/CPR Training Program
BCFC 13-06-03	Emergency Medical/Dental Care Services
BCFC 13-07-01	Health Records
BCFC 13-08-01	Special Diets
BCFC 13-09-01	Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01	Health Education/Special Health Programs
BCFC 13-11-01	Informed Consent
BCFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01	Identification of Special Needs Inmates
BCFC 13-14-01	Use of Pharmaceutical Products

BCFC 13-15-01 Medical Restraints
BCFC 13-16-01 Specialized Health Services
BCFC 13-17-01 Vision Care/Optometry Services
BCFC 13-18-01 Infection Control
BCFC 13-19-01 Exposure Control Plan [~~(Added 5/14/93)~~]
BCFC 14-01-01 Inmate Rights and Responsibilities
BCFC 14-02-01 Legal Services Program
BCFC 14-03-01 Inmate Grievance Procedure
BCFC 14-04-01 Inmate Participation in Authorized Research
BCFC 15-01-01 Due Process/Disciplinary Procedures
BCFC 16-01-01 Inmate Visiting (Amended 6/15/93)
BCFC 16-02-01 Telephone Communications
BCFC 16-03-01 Mail Regulations
BCFC 16-03-02 Inmate Packages
BCFC 17-01-01 Assessment/Orientation Procedure
BCFC 17-02-01 Inmate Reception Process
BCFC 17-04-01 Unauthorized Items
BCFC 17-05-01 Inmate Canteen
BCFC 18-01-01 Institutional Classification Committee
BCFC 18-02-01 Classification Document
BCFC 18-03-01 Classification Process
BCFC 18-03-02 Classification Program Planning
BCFC 18-03-03 Population Category Status
BCFC 18-04-01 Instructions for Six Month Review
BCFC 18-05-01 Transfers to Other Minimum Security Institutions
BCFC 19-01-01 Job and Vocational Program Assignments
BCFC 19-02-01 Government Service Details
BCFC 20-01-01 Academic School
BCFC 20-01-02 Testing and Verification Procedure
BCFC 20-02-01 Educational Program Planning
BCFC 20-03-01 Academic Curriculum
BCFC 21-01-01 Library Services
BCFC 22-01-01 Recreation and Inmate Activities
BCFC 22-02-01 Inmate Clubs and Organizations
BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01 Privilege Trips
BCFC 23-01-01 Religious Service
BCFC 23-02-01 Visitors for Religious Programs
BCFC 23-03-01 Marriage of Inmates
BCFC 24-01-01 Social Services and Counseling Program
BCFC 24-01-02 Casework Services
BCFC 25-01-01 Release Preparation Program Description
BCFC 25-02-01 Temporary Release/Community Center Release
BCFC 25-02-02 Furloughs
BCFC 25-03-01 Preparole Progress Report
BCFC 25-03-02 Parole Eligibility Dates
BCFC 25-04-01 Inmate Discharge Procedure
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: June 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for July 21, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 43 employees of the Bell County Forestry Camp and 200 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(Proposed Amendment)

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

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391
STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E
NECESSITY AND FUNCTION: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391.The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed by the Federal Highway Administration [~~until March 31, 1993~~] for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) [~~Until March 31, 1993,~~] A commercial driver may apply to the Transportation Cabinet for a medical waiver if he:
(a) Operates exclusively in intrastate commerce; and
(b) Has failed to meet the physical requirements of 49 CFR 391, Subpart E, adopted in 601 KAR 1:005.
(2) The application for medical waiver shall be on Kentucky Transportation Cabinet form TC 94-38, "Request for Medical Waiver" effective January, 1991. This form is incorporated by reference as a part of this administrative regulation.
(3)(a) A copy of the completed medical examination form required

by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver.

(b) The medical examination form shall have been completed by a health care professional as delineated in 49 CFR Part 390.5 and adopted in 601 KAR 1:005.

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

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

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

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

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

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

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

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

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

(a) Driving history record of the applicant;

(b) Original medical examination form; and

(c) Supplemental medical report form;

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

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

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

(a) Paraplegics or quadriplegics.

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

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

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

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

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

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

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

4. Not wear bioptic lenses; and

5. Not have uncorrectable double vision.

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

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

1. Have been seizure free for one (1) year prior to requesting the waiver;

2. Not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver; and

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

(e) Cardiovascular.

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

a. A fainting or blackout spell;

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

c. Uncontrollable instances of syncope or vertigo.

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

a. Operating a motor vehicle; or

b. Sitting at rest.

3. A commercial driver shall not have:

a. Difficulty in breathing;

b. Painful breathing; or

c. An aortic or ventricular aneurysm.

4. A commercial driver's:

a. Blood pressure shall not be irregular; or

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

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

1. An uncontrolled condition of diabetes; or

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

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

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

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

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

a. Extreme anxiety;

b. Depression;

c. Paranoia;

d. Confusion;

e. Delusions; or

f. Hallucinations.

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

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

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

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

(b) An additional nonqualifying condition has not manifested.

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

1. At any time; and

2. At least once a year.

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

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

1. The test results; and

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

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

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

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

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

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

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

(b) Report for a skills test.

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

(a) Physical or mental condition; or

(b) Employment or employment conditions.

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

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

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

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

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

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

(a) Commercial driver; and

(b) Division of Driver Licensing.

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

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

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

NORRIS BECKLEY, Commissioner
DON C. KELLY, Secretary

APPROVED BY AGENCY: June 1, 1993

FILED WITH LRC: June 4, 1993 at 2 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 22, 1993 at 1 p.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 July 17, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made 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 July 17, 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 July 17, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The 4,000+ motor carriers based in Kentucky and the drivers of their commercial motor vehicles.

(a) Direct and indirect costs or savings to those affected: The vast majority of these motor carriers operate on an interstate basis and are subject to the federal motor carrier safety regulations. The promulgation of this administrative regulation allows a commercial driver who operates exclusively on an intrastate commerce basis to apply for a medical waiver. In the first year 1300 persons applied for the medical waiver. These were persons who are not legally able to operate a commercial motor vehicle under the current federal and state administrative regulations, but who have been driving anyway. (Most are unaware of the requirement for a biennial medical examination.) We anticipate an additional 300 applications for a medical waiver this year.

1. First year: The cost of the additional medical examinations will be approximately $75 per person. However, of the 300 anticipated waiver applications, we anticipate 80% will be eligible for the medical waivers and therefore, able to retain or obtain jobs as commercial drivers. Assuming a salary of $20,000 per person the overall savings to the applicants will be almost $0.5 million.

2. Continuing costs or savings: With the continued savings by persons who have obtained a waiver, over $10 million each year.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: The applicant for the medical waiver and his physician will be required to complete an application form and a medical report form. Due to a change in the federal regulations governing the original medical examination, the original medical examination may now be performed by a health care professional as defined in 49 CFR Part 390.5.

(2) Effects on the promulgating administrative body: The Trans-

portation Cabinet will be required to review the 300 applications for medical waiver. Physicians may have to be retained on contract to evaluate the applications and supplemental medical report forms of those persons who apply for the medical waiver.

(a) Direct and indirect costs or savings: The cost to the Transportation Cabinet will be the cost of reviewing the applications.

1. First year: The cost the first year which is the second year of the program and the last year new applications will be accepted will be $20,000.

2. Continuing costs or savings: The review of the new and updated medical report forms each year will be accomplished at a cost of $20,000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to carefully monitor each of the persons granted a medical waiver to ensure that the person continues to safely operate a commercial motor vehicle.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. The General Assembly in 1992 required the Transportation Cabinet to continue issuing medical waivers as long as the Federal Highway Administration allowed.

(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 had required that a state's authority to issue medical waivers for intrastate drivers expire March 31, 1993. This administrative regulation reflected that date. In April, 1993, FHWA changed this policy to no expiration date.

Tiering: Was tiering applied? Yes. Tiering was applied in this administrative regulation by allowing persons who would otherwise be ineligible for a commercial driver's license to apply for a medical waiver and setting standards for the issuance of the waivers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of Public Law 99-570 mandated the issuance of Commercial Driver's Licenses by all states. The Federal Highway Administration promulgated 49 CFR Part 383 to implement this requirement. While 49 CFR Part 383 mandates that the commercial driver meet the physical requirements in 49 CFR Part 391, the Federal Highway Administration did allow states who were already allowing drivers in intrastate commerce to be licensed with less stringent standards to continue this practice for two years after the CDL requirement was in place. This administrative regulation formally adopts the medical waivers allowed for intrastate commercial vehicle operators. There is no federal mandate or standard for these waivers. Therefore the remaining questions in this form are not applicable.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Office of Aeronautics
(Proposed Amendment)

602 KAR 50:010. Definitions relating to 602 KAR Chapter 50.

RELATES TO: KRS 183.861 to 183.990, 14 CFR 91.119
STATUTORY AUTHORITY: KRS 183.011(15), 183.861
NECESSITY AND FUNCTION: To define terms used in the administrative regulations of the Kentucky Airport Zoning Commission.

Section 1. Administrative Terms. (1) "Administrator" means the Administrator of the Kentucky Airport Zoning Commission or any individual to whom he has delegated his authority in the matter concerned.

(2) "Commission" means the Kentucky Airport Zoning Commission created pursuant to KRS 183.861 to 183.990.

(3) "FAA" means the Federal Aviation Administration.

(4) "Local zoning body" means an independent, joint or regional planning commission or any local government which is a member of a planning unit created pursuant to KRS Chapter 100.

Section 2. Aeronautical and Zoning Terms. (1) "Aeronautical study" means a review or analysis of the effect of the proposed construction or alteration of a structure upon the operation of an airport and the safe and efficient utilization of the navigable airspace.

(2) "Aircraft" means as defined in KRS 183.011(2).

(3) "Airport" as defined in KRS 183.011(5).

(4) "Airport land use permit" means the approval by order of the commission of a request by a publicly-owned airport to change a use or activity within an airport to one which is otherwise prohibited by the administrative regulation of the commission.

(5) "Airport master plan", "airport layout plan" or "airport map" means the basic plan for the layout of an existing or proposed publicly-owned airport that shows at a minimum:

(a) The present boundaries of the airport and of the off-site area that the owner of a publicly-owned airport owns or controls for airport purposes, and of the proposed additions to the airport boundaries;

(b) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modification and extensions; and

(c) The location of existing and proposed nonaviation areas, and of their existing improvements.

(6) "Airport reference point" means that point on an airport which is used to geographically locate the airport.

(7) "Alter a structure" means to increase or decrease the height of a structure or change the visibility of a structure by painting, marking or lighting the structure in a manner different from the painting, marking, and lighting standards set forth in the administrative regulations of the commission.

(8) "Approach surface" means an imaginary surface at an airport longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(a) The inner edge of the approach surface shall be the same width as the primary surface and shall extend uniformly to a width of:

1. 1,250 feet for that end of a utility runway with only visual approaches;

2. 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

3. 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

4. 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths (3/4) of a statute mile;

5. 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) statute mile; and

6. 16,000 feet for precision instrument runways.

(b) The approach surface shall extend for a horizontal distance of:

1. 5,000 feet at a slope of twenty (20) to one (1) for all utility and visual runways;

2. 10,000 feet at a slope of thirty-four (34) to one (1) for all nonprecision instrument runways other than utility; and

3. 10,000 feet at a slope of fifty (50) to one (1) with an additional 40,000 feet at a slope of forty (40) to one (1) for all precision instrument runways.

(c) The outer width of an approach surface to an end of a runway shall be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(9) "Conical surface" means an imaginary surface at an airport extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of 4,000 feet.

(10) "En route obstacle clearance area" means that airspace needed for an airway, a feeder route, or a Federal Aviation Administration approved off-airway route for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

(11) "Established airport elevation" means the highest point on an airport's existing or planned runway expressed in feet above mean sea level.

(12) "Horizontal surface" means an imaginary horizontal plane at an airport 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc shall be:

(a) 5,000 feet for all runways designated as utility or visual; or

(b) 10,000 feet for all other runways.

(c) The radius of the arc specified for each end of a runway shall have the same arithmetical value. That value shall be the highest determined for either end of the runway. If a 5,000-foot arc is encompassed by tangents connecting two (2) adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(13) "Navigable airspace" means as defined in KRS 183.011(15) and air space at and above the minimum safe altitudes of flight and the air space necessary for normal landing or taking off of aircraft. Except where necessary for takeoff and landing, the minimum safe altitudes as defined in 14 CFR 91.119 are:

(a) Over any congested area of a city, town or settlement, or over any open air assembly of persons, an altitude of 1000 feet above the highest obstacle within a horizontal radius of the aircraft;

(b) Over other than congested areas, an altitude of 500 feet above the surface except over open water or sparsely populated areas; or

(c) Over open water or sparsely populated areas, an altitude of 500 feet above any person, vessel, vehicle or structure.

(14) "Permit" means the written authorization to alter or construct a structure issued in accordance with the findings and directions of the commission pursuant to its administrative regulations.

(15) "Primary surface" means an imaginary surface longitudinally centered on a runway. If the runway has a specially prepared hard surface, the primary surface shall extend 200 feet beyond each end of that runway. If the runway has no specially prepared hard surface, or planned hard surface, the primary surface shall end at each end of that runway. The elevation of any point on the primary surface shall be the same as the elevation of the nearest point on the runway centerline. The width of a primary surface shall be the width prescribed below for the most precise approach existing or planned for either end of that runway:

(a) 250 feet for a utility runway having only visual approaches;

(b) 500 feet for a utility runway having nonprecision instrument approaches; or

(c) For other than a utility runway the width shall be:

1. 500 feet for a visual runway having only visual approaches;

2. 500 feet for a nonprecision instrument runway having visibility minimums greater than three-fourths (3/4) statute mile; or

3. 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths (3/4) of a statute mile, and for a precision instrument runway.

(16) "Publicly-owned airport" means an airport that is open to the general public without prior request to use the airport and which is owned by a public agency, governmental body, airport board, or quasi-governmental body.

(17) "Publicly-owned airport imaginary surfaces" means the air space around an airport necessary for the safe landing and taking off of aircraft. The size of each imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end. The types of imaginary surfaces are defined in this section.

(18) "Runway" means the surface of an airport used for landing and taking off of aircraft as depicted on the airport zoning map, airport master plan or Federal Aviation Administration (FAA) form 7480-1, Notice of Landing Area Proposal. The types of runways and their approaches for airport zoning purposes are:

(a) "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned, and for which no precision approach facilities are planned, or indicated on an FAA planning document.

(b) "Precision instrument runway" means a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), microwave landing system (MLS), or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA approved airport layout plan or any other FAA planning document.

(c) "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA approved airport layout plan, or by any planning document submitted to the FAA by competent authority.

(d) "Utility runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.

(e) "Other than utility runway" means a runway that is constructed for and intended to be used by aircraft with a maximum gross weight both above and below 12,500 pounds. The aircraft may be propeller-driven, turbo-propelled, or jet-propelled.

(19) "Terminal obstacle clearance area" means that airspace needed for the initial, intermediate, final and missed approach segments of an instrument approach procedure and the circling approach in instrument departure areas for the Kentucky airports described in the "U.S. Terminal Procedures, Southeast Volume 1 of 3".

(20) "Transitional surface" means the imaginary surface at an airport which extends outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of seven (7) to one (1) from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and

at right angles to the runway centerline.

Section 3. Incorporation by Reference. The publication of the Federal Aviation Administration "U.S. Terminal Procedures, Southeast Volume 1 of 3" published April 1, 1993 [August 20, 1992] is incorporated by reference as a part of this administrative regulation. A copy of the U.S. Terminal Procedures, Southeast Volume 1 of 3" is on file with the administrator and may be viewed or photocopied at his office on weekdays between 8 a.m. and 4:30 p.m. eastern time. His address is Office of Aeronautics, Kentucky Airport Zoning Commission, 421 Ann Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4480.

BOB G. BODNER, Executive Director
DON C. KELLY, Secretary, Chairman
APPROVED BY AGENCY: May 20, 1993
FILED WITH LRC: May 24, 1993 11 a.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 22, 1993 at 10 a.m., local prevailing time in the Transportation Cabinet, Room 1003, 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 July 17, 1993 so notify this agency. 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 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 July 17, 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 July 22, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All persons in the state who wish to construct a structure which is 200 feet or more above ground level; all aircraft operators in the state; and all aircraft passengers in the state.
(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None as a result of this administrative regulation.
(2) Effects on the promulgating administrative body: None as a result of this administrative regulation.
(a) Direct and indirect costs or savings: None as a result of this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None as a result of this administrative regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not adopting the latest version of th "U.S. Terminal Procedures" was rejected since this is the version th Federal Aviation Administration (FAA) will be using. The Kentucky Airport Zoning Commission coordinates with FAA in regulating structures around the state.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 3:190. Maximum class sizes.

RELATES TO: KRS 157.360
STATUTORY AUTHORITY: KRS 156.070, [157.310,] 157.360
NECESSITY AND FUNCTION: KRS 157.360(4) prescribes that except for those schools that have implemented school-based decision making, hereafter referred to as SBDM, the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades, except in vocal and instrumental music, and physical education classes and shall establish procedures for exemptions to the above. This administrative regulation implements the functions and prescribes criteria for granting class size exemptions. [However, this administrative regulation does not apply to schools which have implemented school-based decision making.]

Section 1. Definitions. (1) "Restricted exemptions" shall mean those exemptions granted prior to September 15 for up to five (5) students over class size maximums in grades four (4) through eight (8).

(2) "Annual exemptions" shall mean those exemptions granted after September 15 for up to two (2) students over class size maximums in the primary program and grades four (4) through twelve (12).

Section 2. Classes shall be within the maximum class size by September 15 of each school year. In a SBDM school, requests for exemptions from class size maximums shall not be required except for special education service delivery and case load. A SBDM school shall serve all students assigned by the local superintendent; however, local boards shall provide SBDM schools the same resources for personnel on the same basis as non-SBDM schools.

Section 3. (1) In non-SBDM schools, more than twenty-four (24) students shall not be assigned to a primary homeroom without an exemption. As children are flexibly grouped for instruction, class size may temporarily exceed twenty-four (24) students. However, it shall be the obligation of the school district to provide staff on a basis that permits a twenty-four (24) to one (1) ratio unless an exemption has been granted pursuant to Section 7 of this administrative regulation.
(2) When an exemption is approved for the primary program, the

services of an aide must be provided immediately. Exemptions for up to two (2) students over the maximum may be granted for primary homeroom assignments and/or total primary program assignments as based on a ratio of twenty-four (24) students to one (1) teacher. In SBDM schools, the same resources for personnel must be provided on the same basis as non-SBDM schools.

Section 4. In order to be in compliance by September 15, a superintendent of a local school district may request approval from the State Board for Elementary and Secondary Education for a one (1) year restricted exemption of no more classes than enroll twenty (20) percent of the pupils in the primary program and grades four (4) through eight (8) in each school, when unusual circumstances are believed to warrant an increased class size. No restricted exemptions shall be granted for classes in grades nine (9) through twelve (12).

[~~Section 4. A class granted a restricted exemption shall not enroll more than five (5) students over the maximum class size requirements.~~]

Section 5. Since the district shall [~~must~~] provide a plan to alleviate the overcrowding problem, a school granted a restricted exemption in a grade shall not be granted a restricted exemption in that grade or the next grade for the following year. Transferring of students between schools in subsequent years for the purpose of qualifying for an exemption shall not be approvable.

Section 6. (1) In order to provide local school districts flexibility in scheduling for short-term transient students, after September 15 this administrative regulation shall not be considered violated until a student enrolled in excess of the class size is enrolled for a three (3) week transition period.

(2) After the three (3) week transition period, the district shall [~~may~~] immediately request an annual class size exemption or initiate corrective action.

Section 7. (1) The department may [~~shall randomly~~] conduct an off-site visit to analyze the district's:

(a) Total classroom space;

(b) Class enrollments; and

(c) Enrollment alternatives.

(2) Exemptions may be granted by the Department of Education upon recommendation of the superintendent that unusual circumstances exist including but not limited to a [~~if it determines that the district is unable to meet the class size requirements due to~~] lack of classroom space.

[~~(3) A district shall not enroll more than two (2) students over the maximum class size in classes in grades four (4) through twelve (12) as to which an annual exemption has been granted.~~]

Section 8. (1) Restricted and annual exemption requests shall be submitted on the specified forms and forwarded to the Office of Assistance and Intervention, Department of Education.

(2) The request for exemption shall contain specific reasons and circumstances causing the increased class size.

(3) The request for exemption shall include a specific plan for reducing the class size prior to the beginning of the next school year.

Section 9. The services of an aide shall be provided immediately upon approval of all class size exemptions, whether restricted or annual

[~~Section 10. There shall be no exemptions for a class or classes with combined grades. Ungraded students shall not be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). No exemptions, restricted or annual, shall be approved for the primary grades (K-3).~~]

Section 10. [~~11.~~] The State Board for Elementary and Secondary Education, through the chief state school officer, shall enforce this administrative regulation through monitoring and update reports submitted by the local school districts on September 15 and January 31 of each school year. Classes that exceed cap size by no more than two (2) students during the last month of the school year shall not require an exemption.

Section 11. [~~12.~~] Failure to comply with this administrative regulation may, in addition to other appropriate sanctions, result in the local superintendent and principal being charged with willful neglect of duty pursuant to KRS 156.132.

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

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless 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: Vickie P. Basham

(1) Type and number of entities affected: 176 districts.

(a) Direct and indirect costs or savings to those affected: Districts will not have to hire a teacher for one or two students over the maximum in the primary grades.

1. First year: Dependent on the number of students.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effect upon competition: None

(b) Reporting and paperwork requirements: Exemption requests in non-SBDM schools.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: SBDM councils will eliminate need for class size exemptions.

(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: Districts will not have to hire a teacher for one or two students over the maximum in the primary grades.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied: 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.

BUREAU FOR LEARNING SUPPORT SERVICES
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:405. Superintendent training program and assessment process.

RELATES TO: KRS 156.111, 160.350
STATUTORY AUTHORITY: KRS 156.111
NECESSITY AND FUNCTION: KRS 156.111 mandates that the Kentucky Department of Education establish a superintendent training program and assessment center and that the State Board for Elementary and Secondary Education adopt administrative regulations to govern the training content, number of hours, written examination, and criteria for successful completion of the training and assessment center process. This administrative regulation implements the superintendent training program and assessment center process.

Section 1. Definitions. (1) "Assessee" means an individual who undergoes the assessment process.

(2) "Assessment center candidate" means a superintendent or applicant for a superintendent position who has been recommended by a local board of education or the Kentucky Department of Education to undergo assessment.

(3) "Assessor" means a trained observer who records and analyzes assessee performance during an assessment.

(4) "Assessor training" means training in which participants are taught how to observe and record behaviors displayed by assessment center candidates and are taught to write objective and comprehensive reports.

(5) "Comprehensive superintendent examination" means a written comprehensive examination over the following subjects:

(a) Core concepts of management;

(b) School-based decision making;

(c) Kentucky school law;

(d) Kentucky school finance;

(e) School curriculum and assessment.

(6) "Final assessment report" means a written report providing the overall performance ratings as well as the performance rating for each skill, and shall include suggestions for improvement and growth, and signatures of all persons involved in the assessment process.

(7) "Mastery level on the Kentucky Superintendent Comprehensive Examination" means a required level of performance on each of the five (5) components of the Kentucky Superintendent Comprehensive Examination to be determined by an advisory committee to the Kentucky Department of Education based on technical reports secured from field test data obtained during the 1992-93 school year.

(8) "Screening committee" means the local superintendent search screening committee required by KRS 160.352.

(9) "Superintendent assessment and training and testing process" means a comprehensive assessment process and training program including assessment of personal administrative skills, training modules in identified skill dimensions and selected concepts related to the position of school superintendent, and a comprehensive examination. Assessment and training are more specifically defined as follows:

(a) "Assessment process" means a Kentucky Department of Education psychometric procedure emphasizing multiple individual and group simulations representative of the superintendent position which will yield extensive feedback of each assessee's strengths and behaviors in skill dimensions validated as essential for effective performance. The assessment process is used to develop a personal skills profile on candidates seeking employment or employed in superintendent positions.

(b) "Training program" means a series of training modules designed for the purpose of improving individual skills of superintendent candidates or providing knowledge in the following subjects:

1. Core concepts of management, up to eighteen (18) hours;
2. School-based decision making, up to nine (9) hours;
3. Kentucky school law, up to nine (9) hours;
4. Kentucky school finance, up to twelve (12) hours;
5. School curriculum and assessment, up to twenty-four (24) hours.

(10) "Written assessment report" means a report which provides each assessee with a profile of strengths and behaviors and suggestions to help improve the assessee's skills.

(11) "Written testing report" means a report which provides each assessee with certification of successful completion of each component of the comprehensive superintendent examination.

Section 2. (1) The Superintendent Training and Assessment Center shall be responsible for the assessment of superintendents and superintendent applicants, provide assessor training, provide training using Kentucky Department of Education approved modules, and serve as the site for the administration of the comprehensive superintendent examination.

(2)(a) The center staff shall coordinate assessments and trainings, maintain all records, make provisions for the necessary reporting of training and assessment status as to all superintendents, and report the status of all superintendent candidates to the chairperson of the local board of education.

(b) The report shall:

1. Be sent at the conclusion of participation in the training, testing, and assessment process;
2. Include a copy to the participating superintendent;
3. Specify whether the participating superintendent successfully completed the training, testing, and assessment process.

(c) A report shall be made to the assessee, the Office of Teacher Education and Certification, and the local board of education chairperson on any person serving in the position of superintendent, who does not complete the assessment and successfully complete the comprehensive superintendent examination within the applicable deadlines set forth in KRS 156.111 and 160.350.

Section 3. (1) The following requirements shall apply to a person hired for the first time as a superintendent in Kentucky after July 1, 1992 and before July 1, 1994:

(a) Superintendents who complete the assessment phase and demonstrate mastery on the Kentucky Superintendent Comprehensive Exam shall be certified as having met the requirements of KRS 156.111.

(b) A superintendent who does not demonstrate mastery on any one (1) of the components of the Kentucky Superintendent Comprehensive Exam shall be eligible to participate in a second training of the appropriate module(s) of the training program prior to retaking the comprehensive examination or shall retake the comprehensive examination on the next scheduled date of the examination.

(2) Persons employed as superintendent in Kentucky prior to July 1, 1992, may elect to not participate in any, or all, of the modules of the training phase and take the appropriate components of the comprehensive examination.

(a) Superintendents who complete the assessment phase and demonstrate mastery on the Kentucky Superintendent Comprehensive

Exam shall be certified as having met the requirements of KRS 156.111.

(b) Superintendents who do not demonstrate mastery on the Kentucky Superintendent Comprehensive Exam shall be eligible to participate in further training in corresponding module(s) as a requirement for eligibility to repeating the comprehensive examination.

Section 4. (1) The Superintendent Training and Assessment Center director shall allocate training and assessment center slots, considering factors to assure diversity and equal access. Local school districts with actual or imminent superintendent vacancies shall be given priority in the assignment of training and assessment center slots.

(2) Each assessee, upon completion of the superintendent assessment center process, shall receive a final assessment report. Superintendents and superintendent candidates shall complete the requirements for training and assessment and achieve the designated mastery level on each of the modules of the Kentucky Superintendent Comprehensive Examination to successfully complete the training and testing and assessment.

(3) Upon completion of the assessment and successful completion of testing by superintendent candidates, the Superintendent Training and Assessment Center staff shall provide the Office of Teacher Education and Certification and the chairperson of the appropriate local board of education a written report confirming completion of the assessment and successful completion of testing.

(4) Persons desiring to be assessed as superintendent, but who are not employed as a superintendent or are not candidates for superintendency at the time, may have requests granted by the Superintendent Training and Assessment Center director at the candidate's expense.

(5) Prior to assessment, an assessment center candidate shall be required to sign an oath which pledges nondisclosure of the assessment center process and materials.

Section 5. (1) The Superintendent Training and Assessment Center staff shall maintain all assessment center reports.

(2) The security of training and testing and assessment data shall be maintained by the Superintendent Training and Assessment Center staff. Each written report shall be the property of the Kentucky Department of Education. Individual profile reports shall be disseminated by the Superintendent Training and Assessment Center staff only after written authorization has been given by the assessee.

(3) All complete written training and assessment center reports shall be retained in confidential Superintendent Training and Assessment Center files. Working documents used by the assessment/training team to formulate each report shall be discarded after three (3) years.

Section 6. The Kentucky Department of Education may [~~shall~~] pay a stipend for each assessment performed by an assessor and for services necessary to conduct training and testing as needed.

Section 7. Complaints regarding failure to comply with statutory and regulatory provisions of the superintendent training and assessment program shall be directed to and evaluated by the Kentucky Department of Education.

Section 8. (1) Continuing education for superintendents shall include:

(a) Participation in forty-two (42) hours of Kentucky Department of Education approved training over twenty-four (24) months; or

(b) Completion of an annual individual personal growth training plan of at least twenty-one (21) hours.

(2) Completion of continuing education of the superintendent shall be reported to the Kentucky Department of Education. The Kentucky Department of Education shall annually notify the local board of education chairperson of the status of the school district's superintendent's continuing education.

(3) Failure to comply with the requirements of this administrative regulation by July 1, 1994, shall result in referral of the matter to the Education Professional Standards Board for consideration of revocation of the superintendent certificate.

This is to certify that the chief of 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

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless 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: Audrey Carr

(1) Type and number of entities affected: 176 school districts.

(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 effect upon competition:

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or 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 those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well

as Sections 2 and 3 of the Kentucky Constitution.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(Proposed Amendment)

780 KAR 3:140. Certification and professional development requirements.

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 for full-time and part-time certified and equivalent staff governing [~~with the provisions of KRS 161B.035 which govern the process for~~] certification and professional development requirements.

Section 1. Certified and equivalent employees in the Department for Adult and Technical Education shall meet the requirements for professional education as specified in the classification system and shall maintain the continuing education requirements and[~~/or~~] regulations promulgated by the State Board for Adult and Technical Education and the Board for Elementary and Secondary Education specified for each certified position as a condition of employment.

Section 2. Maintaining certification shall be the responsibility of the individual employee.

Section 3. An employee may elect to [~~shall~~] maintain the certification requirements in effect at the time of initial employment, or may transfer to current requirements for the position held. Whenever an employee changes from one position to another position with different requirements, the current requirements governing the new position shall be met.

Section 4. Secondary instructors and school administrators shall be fully certified under the provisions of teacher and principal certification regulations as specified by the Kentucky State Board for Elementary and Secondary Education [~~and/~~]or other subsequent body with this [~~such~~] authority. Postsecondary instructors and school administrators shall meet the same requirements as secondary or meet the initial alternative requirements with professional education commitment as specified in the classification system for certified and equivalent employees.

Section 5. All [~~new~~] instructors in the Kentucky Tech System who do not have previous certification and teaching experience shall be required to successfully complete the [~~participate in~~] methods of instruction training offered through the Office of Technical Education prior to teaching students.

Section 6. All new school principals and school directors who possess administrative certification but have no experience in administration shall participate in required staff development activities offered through the Office of Technical Education.

Section 7. Principals, school directors, assistant directors, and guidance counselors, and all other certified and equivalent school personnel shall complete at least twenty-five (25) [~~be required to earn forty-two (42) approved clock~~] hours of training annually beginning July 1 of each year [~~over each two (2) year period~~].

Section 8. All instructors shall complete at least twenty-five (25) clock hours upgrade training annually. [~~These~~] Instructors who must meet [~~have~~] specific continuing education requirements as a part of their occupational licensure obligation [~~or certification~~] shall earn those hours in accordance with the regulations set [~~within the time frames specified~~] by the credentialing [~~licensure or certification~~] body. These hours, when completed, shall apply to the twenty-five (25) clock hour obligation on an hour-for-hour basis beginning July 1 of each year. [~~Effective July 1, 1991, all other instructors shall be required to earn seventy-five (75) clock hours of upgrade training within every three (3) year period.~~]

Section 9. The commissioner may specify required upgrade training for central office and field office certified and equivalent staff, but in no case shall they complete less than twenty-five (25) clock hours of training annually beginning July 1 of each year.

Section 10. If an employee does not hold a valid certificate, does not complete the requirements for renewal, or does not complete the appropriate continuing education requirements, his employment shall be terminated. The commissioner may make an exception if the requirements could not be met due to personal illness or other just cause beyond the control of the employee. The employee may be granted one (1) year in which to obtain the requirement.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: June 10, 1993
FILED WITH LRC: June 15, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 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 by July 22, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, 502/564-4286

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly H. Haverstock
(1) Type and number of entities affected: Certified and equivalent employees who are full time in the KRS Chapter 151B personnel system. Approximately 1,477 employees.
(a) Direct and indirect costs or savings to those affected: None. This regulation does not change requirements. It makes upgrade training clear and consistent throughout the system.
(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: No change.
(2) Effects on the promulgating administrative body: None. This regulation merely provides a more efficient method of accounting for upgrade training for staff.
(a) Direct and indirect costs or savings:
(1) First year:
(2) Continuing costs or savings:
(3) Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues:

No. Staff requirement will remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives and methods of requiring upgrade training were not consistent among various classifications; therefore, they have been replaced by this regulation.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: None. Any certification or licensure requirement for staff is accommodated by 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: None

TIERING: Was tiering applied: No. Tiering was not applied because all staff is treated uniformly in terms of upgrade training requirements.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:270. Maximum weekly benefit rates.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 194.050, 341.380

NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1993 [~~1992~~], and prior to July 1, 1994 [~~1993~~]. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1992 [~~1991~~] was 16,834,545 [~~16,432,030~~];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,402,879 [~~1,369,336~~];

(3) The "total wages" reported by subject employers for the calendar year of 1992 [~~1991~~] was $30,342,989,530 [~~28,082,939,030~~];

(4) The "average weekly wage" for the calendar year of 1992 [~~1991~~] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $415.94 [~~394.39~~];

(5) Fifty-five (55) percent of the average weekly wage of $415.94 [~~394.39~~] for the calendar year of 1992 [~~1991~~] was $228.77 [~~216.91~~].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1993 [~~1992~~], and prior to the first day of July, 1994 [~~1993~~], is determined to be $229 [~~217~~].

MARGARET WHITTET, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: May 26, 1993

FILED WITH LRC: June 2, 1993 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1993, at 9 a.m. at the Vital Statistics Conference Room, CHR Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by July 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: William K. Moore, Deputy Counsel, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Whittet

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First Year: All eligible UI recipients for the year 7-1-93 through 7-1-94.

2. Continuing costs or savings: An estimated additional $10.8 million paid to eligible UI recipients.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgated administrative body:

(a) Direct and indirect costs or savings:

1. First year: An additional $10.8 million paid from the Unemployment Insurance Trust Fund to UI recipients.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.

(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 alternative methods available in accordance with statutory requirements.

(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: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determines the maximum weekly rate prior to July 1 of each year.

TIERING: Was tiering applied? No. All claimants treated equally.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 2:100. Certification of family child care homes.

RELATES TO: KRS 17.165, 199.898, 199.8982 [~~Acts 1992, c. 57, Section 1 and 2, p. 412-415~~], 42 USC 602

STATUTORY AUTHORITY: KRS 194.050, 199.8982 [~~Acts 1992, c. 57, Section 1 and 2, p. 412-415~~]

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.8982 [~~SB 211~~], the Department for Social Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children. [~~This administrative regulation contains the substance of 905~~

~~KAR 2:070 which is herein repealed.~~]

Section 1. Definitions. These definitions shall be used in this administrative regulation.

(1) "Assistant" means a person:

(a) Sixteen (16) years of age or older;

(b) Under direct supervision of a provider or substitute provider; and

(c) Has obtained a criminal records check and tuberculosis skin test.

(2) "Cabinet" means the Kentucky Cabinet for Human Resources.

(3) "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.

(4) "Commissioner" means the Commissioner for the Department for Social Services.

(5) "Family child care home" as governed by KRS 199.8982 [~~SB 211~~] and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children.

(6) "Home" means the private primary residence of the provider.

(7) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) Family child care home;

(c) Adult day care center;

(d) Adult day health care facilities;

(e) Family care home;

(f) Group homes for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;

(h) Intermediate care facilities;

(i) Nursing facilities;

(j) Nursing homes;

(k) Personal care homes;

(l) Skilled nursing facilities;

(m) Psychiatric residential treatment facilities;

(n) Child caring facilities;

(o) Child placing agencies;

(p) Rural primary-care hospitals;

(q) Alzheimer nursing homes;

(r) Youth camps;

(s) Boarding home;

(t) Alternate intermediate services for the mentally retarded or developmentally delayed.

(8) [~~(7)~~] "Infant" means a child under one (1) year of age.

(9) [~~(8)~~] "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.

(10) [~~(9)~~] "Provider" means an owner, operator or person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:010 [~~2:090~~].

(11) [~~(10)~~] "Provider's own child" means the providers's own children and children in legal custody.

(12) [~~(11)~~] "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.

(13) [~~(12)~~] "Related child" means a certified provider's grandchildren, nieces and nephews.

(14) [~~(13)~~] "School-age child" shall be considered as one attending kindergarten or above.

(15) [~~(14)~~] "Special needs child" means children who have multiple or severe problems and the Department for Social Service staff has confirmed the need for ongoing specialized care.

(16) [~~(15)~~] "Substitute provider" means a person:

(a) Who is eighteen (18) years of age;

(b) Has obtained a criminal records check and a tuberculosis skin test; and

(c) Is available to provide care in a family child care home.

(17) [~~(16)~~] "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The department shall be responsible for the certification of family child care homes.

(2) Authorized representatives of the department shall have the authority to:

(a) Inspect premises;

(b) Review records required by this administrative regulation; and

(c) Review the program of family child care homes.

(3) Inspections by the department shall be unannounced.

(4) A provider shall apply for certification if the provider is caring for four (4) to six (6) unrelated children and may apply if caring for three (3) or fewer children as governed by KRS 199.8982 [~~SB 211~~].

(5) A person who has had a human services center or facility certification, license, registration or permit to operate a human services center denied or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for certification after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If certification is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the family child care home shall be inspected on at least a quarterly basis. Inspections shall be unannounced as governed by KRS 199.8982.

(6) [~~(5)~~] A provider making application for certification shall:

(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference herein;

(b) Complete the DSS-79, Self-Check List, incorporated by reference herein;

(c) Meet the minimum requirements as governed by KRS 199.8982 [~~SB 211~~];

(d) Submit a criminal records check for adult persons living in the home;

(e) Comply with provisions set forth in Sections 5 through 11 of this administrative regulation. [~~; and~~]

[~~(f) Within three (3) months of the date of preliminary permission to operate, demonstrate completion of training as governed by SB 211;~~

~~(g) comply with deficiencies cited during the inspection of the home specified in subsection (2) of this section.~~]

(7) [~~(6)~~] Upon receipt of the application and fee, staff of the department shall:

(a) [~~Staff shall~~] Review the application [~~and, if acceptable, shall issue a written preliminary permission to operate~~]; and

(b) Conduct an [~~initial~~] inspection of the home [~~shall be made by a representative of the department~~] as governed by KRS 199.8982 [~~SB 211~~].

(8) [~~(7)~~] If the requirements have been met, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;
2. Limit of children to be served;
3. Identification number; and

4. Effective and expiration dates.

(b) The certification shall be valid for the certified provider [caregiver] and the address listed. A change of location [address or move change] shall require a new certification application and inspection as specified in subsections (6) and (7) of this section. [be reported to the Department for Social Services and an updated DSS-79 completed.]

(9) [(8)] If the provider does not [wish or cannot] comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, [then] the application shall be denied.

(10) [Section 3. Renewal. (1)] The application for [renewal] certification process shall be repeated every two (2) years.

Section 3. Denial, Suspension, or Revocation. [(2)] The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(1) [(a)] Provider, [or] an adult living in the provider's home or person under the supervision of the provider:

(a) [1.] Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or

(b) [2.] Refuses to provide a criminal records check; [or]

(2) Provider or/and an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(3) Provider [(b) Family child care home] fails to comply with certification standards set forth in this administrative regulation; or

(4) Provider has had a human services center or facility registration, certification, permit or license denied or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial or revocation action.

[(3) The provider shall obtain liability insurance.]

Section 4. Appeal. (1) If the cabinet denies, suspends, or revokes [or refuses to renew] a certification, the cabinet shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(2) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receiving the notice of the action from the cabinet.

(3) Upon receipt of the request for hearing, the commissioner, or [commissioner's] designee, shall notify the provider in writing within fifteen (15) days of the time and place of the hearing. The commissioner, or designee, shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(4) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision of the hearing officer shall be final. The provider shall be notified in writing of the decision of the hearing officer.

(5) If denial or revocation of certification is upheld, the commissioner's or designee's notification shall specify the date by which the family child care home shall close.

(6) If one (1) of the grounds for denial, suspension or revocation set forth in Section 3 of this administrative regulation exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

(a) The provider may request a postdeprivation hearing in writing within fifteen (15) days of receipt of the notice of suspension or revocation. The request shall be mailed to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) If requested, the department shall conduct a hearing within thirty (30) days of receipt of the request. The hearing may be continued at the request of the provider.

(7) [(6)] A family child care home continuing to have four (4) to six (6) unrelated children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 5. Standards for the Provider. (1) Qualifications of provider and staff:

(a) The provider shall be at least eighteen (18) years of age;

(b) The provider shall meet minimum requirements as governed by KRS 199.8982 [SB 211]; and

(c) Beginning with the second year of operation, the provider shall participate annually in at least six (6) hours of training in child development approved by the Department for Social Services.

(2) Staff-child ratio.

(a) A provider shall not provide care for more unrelated children than the number of children for which the family child care home is certified

(b) [(a)] If more than four (4) infants, including the certified provider's own or related infants, are in care, the certified provider shall employ an assistant.

(c) [(b)] A certified provider shall not care for more than six (6) children under the age of six (6) years old. This shall include the certified provider's own or related children.

(d) [(c)] The maximum number of children in the care of a certified provider, including the providers' own or related children, shall not exceed ten (10).

(3) Within three (3) months of the date of application for certification the provider shall:

(a) Demonstrate completion of training as governed by KRS 199.8982; and

(b) Obtain liability insurance.

(4) The provider shall be annually certified in cardiopulmonary resuscitation (CPR). The effective date of this requirement shall be July 1, 1994. However, the effective date may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1994, contingent upon the assessability of CPR training in all areas of the Commonwealth.

Section 6. The Family Child Care Home Environment. (1) The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(2) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(3) The home shall be free of hazards and the following items shall be kept inaccessible to children:

(a) Medications and drugs;

(b) Cleaning supplies, poisons and insecticides;

(c) Guns, knives, scissors and sharp objects;

(d) Power tools, lawn mowers, hand tools, nails and other equipment;

(e) Matches, cigarettes, lighters and flammable liquids;

(f) Alcoholic beverages;

(g) Plastic bags; and

(h) Litter and rubbish.

(4) Electrical outlets not in use shall be covered.

(5) Electric fans, floor furnaces, or freestanding heaters or fi replaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(6) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

(a) Police;

(b) Fire station;

(c) Emergency medical care, rescue squad; and

(d) Poison control center.

(7) Equipment and toys shall be developmentally appropriate for

the ages and number of children in care and be kept in good repair.

(8) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(9) The provider shall maintain first aid supplies that are easily accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing unexpired items approved by the American Red Cross.

(10) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(11) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(12) Outdoor stationary play equipment shall be securely anchored.

(13) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(14) Health and sanitation for the child care environment shall require that the provider:

(a) Have a home that is kept clean, uncluttered and free of insects and rodents;

(b) Have a water supply properly located, protected, adequate, and of a source approved by the local health department;

(c) Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;

(d) Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

(e) Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty (40) degrees or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation or use;

(f) Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;

(g) Serve only pasteurized milk or milk products;

(h) Screen windows and doors used for ventilation;

(i) Have household pets vaccinated for rabies;

(j) Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;

(k) Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be provided for each child and shall be changed at least weekly or if they become soiled or wet.

(15) Program for children. A plan for daily activities and routines shall be established.

(16) Children shall be released from the family child care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; and

(c) A person in an emergency designated over the telephone by the parent.

Section 7. To assure a healthy environment, the provider shall:

(1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;

(2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and shall include the following information:

(a) The child's name, address, and date of birth;

(b) The names of individuals to whom the child may be released;

(c) The general status of the child's health;

(d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;

(e) The names and phone numbers of persons to be contacted in an emergency situation;

(f) The name and phone number of the child's physician and preferred hospital; and

(g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.

(3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;

(4) Prohibit prescription medications or aspirin to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian; [~~and~~]

(5) Administer nonprescription medication to a child only with written daily request of parent or guardian; and [~~.~~]

(6) The provider shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect as governed by KRS Chapter 620.

Section 8. Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

(1) Have written permission from a parent or guardian to transport his child;

(2) Have a car or van equipped with seat belts which allows each child to be individually secured;

(3) Require that each child shall have a seat, be individually seat-belted and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat in good repair;

(4) Have a valid driver's license issued by the Division of Motor Vehicles;

(5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and

(6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, [~~138.655, and~~] 186.020 and Chapters 189 and 189A.

(7) Never leave children in a vehicle unattended by an adult.

(8) Never use the back of pickup trucks to transport children.

Section 9. Child Records. The provider shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Human Resources or as governed by this administrative regulation.

Section 10. The program shall ensure ongoing communication with a child's parent by:

(1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;

(2) Make available a copy of the certification standards to each parent;

(3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; and

(4) Post and provide to each parent copies of children and parent rights pursuant to KRS 199.898 [~~SB 211~~].

Section 11. The provider shall comply with the following:

(1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(2) Wash hands with soap and water before and after diapering a child.

(3) Use sanitary procedures when preparing and serving food.

(4) Assure that children shall not share cups, eating utensils wash cloths or towels.

(5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except

those drugs prescribed by a physician.

(6) Prohibit smoking in the presence of children in care.

(7) The provider or other person in the home shall not use physical punishment:

(a) A child shall not be:

1. Handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking and spanking; or

2. Placed in a locked room, closet, box or other confined space;

(b) The provider or other person in the home shall not:

1. Use disciplinary methods which humiliate, shame or frighten the child; or

2. Use harsh or demeaning language in the presence of the children;

(c) Discipline shall not be:

1. Delegated to another child; or

2. Related to food, rest or toileting:

a. Food shall not be withheld or given as a means of discipline;

b. A child shall not be disciplined for lapses in toilet training; or

c. A child shall not be disciplined for not sleeping during rest time.

(8) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.

(9) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.

(10) Infants in care shall be held during feeding and bottles shall never be propped.

(11) If overnight care is provided, the provider shall:

(a) Remain awake until every child in care is asleep;

(b) Sleep on the same level as infants and toddlers; and

(c) Provide comfortable, clean and safe bedding for each child.

(12) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.

(13) Provide opportunities for outdoor play or fresh air.

(14) Be able to recognize symptoms of childhood illnesses.

(15) Visually supervise children who are awake and be able to respond to the children immediately.

(16) Be able to provide basic first aid.

(17) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 12. Incorporation by Reference. (1) Forms necessary for the implementation of the certification of family child care homes shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Department for Social Services, Cabinet for Human Resources Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

Section 13. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1993, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resource Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by July 17, 1993: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are the 339 currently certified family child care homes and 230 applications filed requesting certification or any other entity that requests certification to operate a family child care home.

(a) Direct and indirect costs or savings to those affected: The direct and indirect costs to the affected entities include the provision requiring a new certification if the provider changes location and the provisions that authorizes the cabinet to deny, suspend, or revoke a certification if the provider, adult living in the provider's home, or person under the supervision of the provider has abused, neglected, or exploited a child or an adult or if the provider has had a human services center or facility registration, certification, permit, or license denied or revoked. Another direct or indirect cost to the entities is the provision that requires certified providers who care for four or more infants, including the provider's own or related infants, to employ an assistant.

1. First Year: First year costs to the affected entities may be incurred if the certified provider changes the location of the family child care home. Other first year costs may be incurred if the provider, adult living in the provider's home, or person under the supervision of the provider has abused, neglected, or exploited a child or an adult or if the provider has had a human services center or facility registration, certification, permit, or license denied or revoked and the cabinet denies, suspends, or revokes the provider's license. Another direct or indirect cost to the entities is the provision that requires certified providers who care for four or more infants, including the provider's own or related infants, to employ an assistant.

2. Continuing costs or savings: Continuing costs to the affected entities may be incurred if the certified provider changes the location of the family child care home. Other continuing costs may be incurred if the provider, adult living in the provider's home, or person under the supervision of the provider has abused, neglected, or exploited a child or an adult or if the provider has had a human services center or facility registration, certification, permit, or license denied or revoked and the cabinet denies, suspends, or revokes the provider's license. Another direct or indirect cost to the entities is the provision that requires certified providers who care for four or more infants, including the provider's own or related infants, to employ an assistant. Additional costs to the certified provider may be incurred with the provision requiring cardiopulmonary resuscitation (CPR) training by July 1, 1994. However the effective date of this requirement may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1, 1994, contingent upon the assessability of CPR training in all areas of the Commonwealth.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Additional factors increasing the costs to the entities affected include the provision that if an applicant has had a human services center or facility certification, license, registration, or permit to operate revoked, they may not apply for certification as a family child care home for five years and then only after establishing the ability to comply with the administrative regulation and completion of sixty hours of training in developmentally appropriate child care practice. Additionally the provider will be on probation for two years during which the home will be inspected at least quarterly.

(b) Reporting and paperwork requirements: The only additional reporting and paperwork requirements are if the provider changes the location of the family child care home and must submit a new application for certification or if the provider is on probation as a result of having a human services center or facility certification, registration, permit, or license revoked.

(2) Effects on the promulgating administrative body: The effect on

the promulgating agency is that the Department for Social Services, as the agency responsible for child protection, will be able to use the resources available to deny, suspend or revoke a certification if the provider, adult living in the provider's home, or person under the supervision of the provider has had a human services center or facility certification, registration, permit, or license revoked or has committed abuse, neglect or exploitation of a child or an adult. This amendment also prohibits an applicant from applying for certification if the applicant has had a human service center or facility certificate, registration, permit or license revoke for five years and establishes criteria for compliance and training prior to applying for a certification for a family child care home. This amendment clarifies the administrative regulation regarding liability insurance and enables the cabinet to require providers to obtain liability insurance.

(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the additional coordination to verify that applicants for certification have not had human services center or facility certifications, registrations, permits, or licenses revoked. Other direct or indirect costs may be incurred with the verification and follow up required if applicants have had a prior revocation and are on probation. Another direct or indirect cost that may be incurred is the costs of appeal hearings if the department denies, suspends or revokes a certification. Indirect savings to the agency will be the development of certified family child care homes in which the potential for abuse, neglect or exploitation has been decreased through compliance with these new provisions. An indirect cost to the agency could occur if a child sustains an injury which requires hospitalization or rehabilitative services and such circumstances could permit the child to become Medicaid eligible. Medicaid payments for services would cost the Commonwealth general fund and Medicaid dollars, but the requirement for liability insurance would protect the state agency and the provider from being liable for possible extensive medical care.

1. First Year: Additional costs to the agency may be incurred from the additional coordination to verify that applicants for certification have not had human services center or facility certifications, registrations, permits, or licenses revoked. Other direct or indirect costs may be incurred with the verification and follow up required if applicants have had a prior revocation and are on probation. Another direct or indirect cost that may be incurred is the costs of appeal hearings if the department denies, suspends or revokes a certification. Indirect savings to the agency will be the development of certified family child care homes in which the potential for abuse, neglect or exploitation has been decreased through compliance with these new provisions. An indirect cost to the agency could occur if a child sustains an injury which requires hospitalization or rehabilitative services and such circumstances could permit the child to become Medicaid eligible. Medicaid payments for services would cost the Commonwealth general fund and Medicaid dollars, but the requirement for liability insurance would protect the state agency and the provider from being liable for possible extensive medical care.

2. Continuing costs or savings: Additional costs to the agency may be incurred from the additional coordination to verify that applicants have not had human services center or facility certifications, registrations, permits, or licenses revoked. Other direct or indirect costs may be incurred with the verification and follow up required if applicants have had a prior revocation and are on probation. Another direct or indirect cost that may be incurred is the costs of appeal hearings if the department denies, suspends or revokes a certification. Indirect savings to the agency will be the development of certified family child care homes in which the potential for abuse, neglect or exploitation has been decreased through compliance with these new provisions. An indirect cost to the agency could occur if a child sustains an injury which requires hospitalization or rehabilitative services and such circumstances could permit the child to become Medicaid eligible. Medicaid payments for services would cost the Commonwealth general fund and Medicaid dollars, but the requirement for liability insurance would protect the state agency and the provider from being liable for possible extensive medical care.

3. Additional factors increasing or decreasing costs: Additional factors that may increase or decrease the direct or indirect costs to the agency include a reduction in the potential number of child abuse investigations as a result of the provisions that enable the department to deny, suspend or revoke certifications for family child care homes, the amount of staff time devoted to the coordination of data from other agencies and the development of interactive systems, and the actual number of appeal hearing based upon the denial, suspension, or revocation of a provider's certification.

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements for the agency include coordination with other agencies to verify if human services center or facility certifications, registrations or licenses have been denied or revoked, processing new certifications when a provider changes locations, quarterly inspections of providers who are on probation, and some revisions in the survey forms will be required to incorporate changes in the administrative regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as these revisions are necessary to provide additional protection for children in the Commonwealth by enabling the department to require liability insurance and to deny, suspend or revoke certifications if the provider or applicant cannot comply with the provisions of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or policy that are in conflict, overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: There are no conflicts in statute, administrative regulations or policy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There are no conflicts in statute, administrative regulations or policy.

(6) Any additional information or comments: These amendments further strengthen the Department for Social Services mandate pursuant to KRS Chapter 620 to protect children from abuse, neglect, or exploitation by enabling the Department to deny, suspend, or revoke certifications or applications for certification if the provider, adult living in the provider's home, or person under the supervision of the provider has committed abuse, neglect, or exploitation of a child or an adult or if the provider has had a human services center or facility registration, certification,or license revoked. Additional health and safety issues that will add further protection for children in care include the provision that requires certified providers who care for more than four infants, including the certified provider's own or related infants, to employ an assistant and the requirement for certified providers to obtain CPR training by July 1, 1994. However the effective date of this requirement may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1, 1994 contingent upon the assessability of CPR training in all areas of the Commonwealth.

TIERING: Was tiering applied? No. Upon adoption of these administrative regulations, all certified homes or applicants for certification shall be required to comply with the provisions of this administrative regulation statewide.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:017. Hospital indigent care assurance program (HICAP).

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 205.575
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid program [~~of Medical Assistance~~] and the Hospital Indigent Care Assurance Program (HICAP). This administrative regulation sets forth provisions relating to implementation of HICAP.

Section 1. Definition. "Nonparticipant" means a hospital not complying with the conditions of participation for the Hospital Indigent Care Assurance Program (HICAP).

Section 2. Conditions of Participation. A hospital participating in HICAP shall submit to the cabinet any requested information to show the required sign has been posted.

Section 3. Departmental Actions Based on Noncompliance with Participation Requirements. (1) A hospital shall be considered a nonparticipant when it fails to meet one (1) or more of the requirements shown in KRS 205.575 and Section 2 of this administrative regulation. A hospital shall be notified in writing when the department determines the facility to be a nonparticipant. Prior to written notification, the department shall provide the hospital an opportunity to:

(a) Discuss the department's determination; and

(b) Present evidence of its compliance with participation requirements.

(2) A hospital which is a nonparticipant shall not be paid HICAP benefits until all participation requirements are met.

Section 4. Assessments. The assessment percentage for annual periods beginning January 1, 1991 (except for the quarter beginning on April 1, 1993 and ending June 30, 1993), shall be five (5) percent utilizing hospital cost reports used in setting the year's Medicaid hospital rates. The assessment percentage for the quarter beginning April 1, 1993 and ending June 30, 1993 shall be 3.7312 percent utilizing hospital cost reports used in setting the year's Medicaid hospital rates. The department shall reserve $1,000,000 as a contingency reserve and shall reserve two (2) percent of the assessments for necessary administrative expenditures as provided for in KRS 205.575.

Section 5. HICAP Benefit Payments. If a hospital appeals a departmental decision with regard to its assessment payment amount or its HICAP benefit amount to Franklin Circuit Court, it may nevertheless pay to the department the assessment payment amount computed by the department with the understanding that the payment shall not compromise its right of action in court and that its final assessment payment amount or HICAP benefit payment amount shall be contingent on expiration of the time of judicial appeals or on court determination.

Section 6. Assessment Schedules. (1) The assessment payment due date for each calendar quarter shall be on the last day of the second month of each quarter, except that the department may establish administratively different assessment schedules for the calendar quarters ending March 31, 1991 and June 30, 1991 to accommodate assessment and payment requirements mandated by KRS 205.575.

(2) A hospital may request a delay in its assessment payment due date based on unforeseeable circumstances affecting the hospital's ability to pay in a timely manner. Unforeseeable circumstances may include, but are not limited to, substantial disruptions of management or operations from occurrences such as fire, flood, storm, bankruptcy or other demonstrated financial hardship. Simple inability to pay, if combined with a filing of bankruptcy or other demonstrated financial hardship by the hospital, shall constitute justification for a delayed payment schedule. If a delay is granted, the delay shall not exceed sixty (60) days. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount or the HICAP benefit amount shall be justification for a delay in payment of the assessment until the court case is resolved.

Section 7. Waiver of Late Payment Penalties. The commissioner of the department shall waive the late payment penalty specified in KRS 205.575 ($20,000 per incident of late payment) only when good cause exists. Good cause shall be determined to exist only when an unforeseeable circumstance occurs affecting timely payment. Unforeseeable circumstances may include substantial disruptions of management or operations from occurrences such as fire, flood, storm or similar events. Good cause may also exist when the responsible official of the hospital reasonably anticipated that payment was or should have been made (e.g., payment was mailed timely but lost in the mail). Failure to pay due to insufficient funds shall not be good cause for a waiver of the penalty unless combined with a bankruptcy filing of the hospital. An appeal to the Franklin Circuit Court (or a higher court as appropriate) with regard to the assessment payment amount or the HICAP benefit payment amount shall be considered to meet the criteria for good cause.

Section 8. Termination of HICAP. HICAP shall terminate, except for activities required to resolve outstanding issues, effective July 1, 1993.

JANIE A. MILLER, Acting Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 3, 1993
FILED WITH LRC: June 4, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 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 acute care hospitals in the state 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: $10 million revenue reduction*.
2. Continuing costs or savings: $10 million revenue reduction*.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *The regulation change is made to comply with KRS 205.575.
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.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate for the Medicaid Program.
2. State compliance standards. This administrative regulation establishes the payment schedule for Hospital Indigent Care Assurance Program (HICAP) assessment amounts.
3. Minimum or uniform standards contained in the federal mandate. There are no minimum or uniform standards contained in a federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The standards and responsibilities specified in the regulation are established pursuant to KRS 205.575 which provides for the Hospital Indigent Care Assurance Program.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 1993

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts

45 KAR 1:070. Technical audit bulletins.

RELATES TO: KRS 61.190, 64.840, 64.850, 66.480, 68.300, 132.601(1), Ky Const. S 173; Funk vs. Milliken, 317 S.W. 2d 499 (KY 1958)

STATUTORY AUTHORITY: KRS 43.075

NECESSITY AND FUNCTION: KRS 43:075 states that the Auditor of Public Accounts shall promulgate uniform standards and procedures by administrative regulation for conducting audits of county officials. This regulation establishes uniform standards and procedures regarding certain practices which shall be subject to report as audit comments in audits of county officials.

Section 1. Technical Audit Bulletins. "The Office of the Auditor of Public Accounts' Technical Audit Bulletins", dated October 1, 1993, are incorporated by reference. They may be inspected, obtained or copied at the Office of the Auditor of Public Accounts, 144 Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

A.B. CHANDLER III, State Auditor

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 30, 1992, at 10 a.m., at 2439 U.S. 127 South. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, July 25, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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: David H. MacKnight, General Counsel, Office of the Auditor of Public Accounts, Room 144, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-5841.

REGULATORY IMPACT ANALYSIS

Contact Person: David H. MacKnight

(1) Type and number of entities affected: The audits of the financial administration and cash management practices of all county fiscal courts and county fee officials are governed by the regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: Plus $100,000. Based upon the improvement in the accounting for county fees and revenues.

2. Continuing costs or savings: $100,000 each year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The audit time and costs associated with the performance of audits of county officials will be decreased as a result of clear and uniform auditing standards.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The amount of savings cannot be estimated but the costs associated with the performance of audits of county officials will be reduced as a result of clear and uniform auditing standards.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: Local revenues should be enhanced as a result of this regulation's improvements in the auditing of the expenditures of county funds.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No. KRS 43.075 requires the Auditor of Public Accounts to promulgate, by administrative regulation, uniform auditing standards and procedures applicable to all county officials.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Is tiering applied? No, because this regulation applies to all county officials.

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. This regulation will affect all county officials.

3. State the aspect or service of local government to which this administrative regulation relates. The audits of county officials.

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 (+/-): Local revenues should be enhanced by approximately $100,000 as a result of this regulation's improvements in the auditing of the expenditure of county funds.

Expenditures (+/-): Same

Other Explanation: N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Medical Licensure

201 KAR 9:310. Continuing medical education.

RELATES TO: KRS 311.565, 311.601(1), (2)

STATUTORY AUTHORITY: KRS Chapter 13A, 311.565, 311.601(1), (2)

NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish continuing medical education requirements.

Section 1. Continuing Medical Education. After January 1, 1994, every licensee is required to submit, with his or her annual licensure renewal form, verification of satisfactory completion of a program of continuing medical education. The following are the requirements for licensees:

(1) Licensees shall complete a minimum of sixty (60) hours of continuing medical education every three (3) years, with thirty (30) of said hours being certified in Category I by an organization accredited by the Accreditation Council on Continuing Medical Education. Verification of such attainment shall be submitted to the board before April 1 of a given year and can be submitted in the following ways:

(a) Submit evidence that the licensee has received the American Medical Association's (AMA's) "physician recognition award" (PRA) or the American Osteopathic Association's (AOA's) "osteopathic physicians' recognition award" (OPRA) and that such award is in effect at the time a license is renewed.

(b) Submit verification that the licensee has completed continuing medical education requirements of any specialty organization which are recognized by the AMA or AOA as at least equivalent to their recognition awards, and that such certification is in effect at the time a license is renewed.

(c) Submit verification that the licensee is in or has been in an approved postgraduate training program. Each year of postgraduate training is equivalent to fifty (50) hours of continuing medical education.

(2) The board may grant an extension of time to a physician who for sufficient cause has not yet received continuing medical education certification.

(3) A minimum of two (2) of the continuing medical education hours shall be in HIV/AIDS courses approved by the Cabinet for Human Resources pursuant to 201 KAR 2:160.

(4) Each year, with the application for renewal of an active license to practice medicine, the board will include a question which requires the licensee to certify by signature, that he or she has met the continuing medical education requirements for the three (3) year cycle. In addition, the board may randomly require physicians submitting such a certification to demonstrate satisfactory completion of the continuing medical education requirements stated in his or her certification.

(5) The licensee who fails to timely complete the continuing medical education requirements, or who fails to obtain an extension of time as outlined in Section 4 of this administrative regulation, shall be fined a minimum of $200 and allowed six (6) months to come into compliance. After the six (6) month period of time, should the licensee still be in noncompliance, his/her license shall be immediately suspended until such time as verifiable evidence is submitted indicating completion of the continuing education requirements.

(6) Under no circumstances will waivers be granted from the requirements of this regulation.

ROYCE E. DAWSON, M.D., President

APPROVED BY AGENCY: May 20, 1993

FILED WITH LRC: June 3, 1993 at 8 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on Friday, July 30, 1993, at 10 a.m., at the office of the Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by July 25, 1993, five (5) 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 hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Agency Contact: C. William Schmidt

(1) Type and number of entities affected: All physicians who are licensed to practice medicine in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: These continuing medical education courses may cost licensees; however, many courses are offered at no cost by hospitals, medical societies, etc.

1. First year: See (1)(a) above.

2. Continuing costs or savings: See (1)(a) above

3. Additional factors increasing or decreasing costs (note any effects upon competition): All physicians will be required to obtain continuing education. No real effect upon competition.

(b) Reporting and paperwork requirements: Slight increase in reporting and paperwork requirements for licensee.

(2) Effects on the promulgating administrative body: Paperwork and staff workload will increase.

(a) Direct and indirect costs or savings: Increased workload would require additional staff.

I. First year: See 3(2)(a) above.

2. Continuing costs or savings: See 3(2)(a) above.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork.requirements: Anticipate paperwork and reporting requirements to increase.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was having no mandatory continuing education. The board feels that the public and profession need assurances of continued competency.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: N/A - see 3(5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see 3(5) above.

(6) Any additional information or comments: The board feels that this regulation will assure the public of continued competency of Kentucky physicians.

TIERING: Was tiering applied? No. Continuing medical education requirements shall pertain to all licensees of the board. There is no valid reason to impose varying requirements.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 57:041. National emission standards for hazardous air pollutants; benzene waste operations.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7401, 7412, 7414, 7416, 7601, 40 CFR Part 61. Subpart FF

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollutior The federal regulation adopted without change in this administrative regulation establishes National Emission Standards for the control of emissions from benzene waste operations.

Section 1. The standards for benzene waste operations are governed by 40 CFR 61, Subpart FF, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1992, and as amended by Federal Register, 58 FR 3095, January 7, 1993. Except for those authorities reserved to the Administrator of the U.S. Environmental Protection Agency in the federal National Emission Standard for Hazardous Air Pollutants (NESHAP), or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal NESHAP shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. It also applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by any chemical manufacturing plant, coke by-product recovery plant, or petroleum refinery.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for benzene waste operations 40 CFR 61, Subpart FF. The federal NESHAP regulation applies to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. It also applies to owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by any chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. A facility with a total annual benzene (TAB) calculation below 10 Mg/yr is only subject to the regulation's reporting and recordkeeping requirements, unless the facility receives waste from off site that must be controlled to meet the requirements of Subpart FF, in which case that waste must be controlled. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provisions of the federal NESHAP regulation, 40 CFR 61, Subpart FF.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the final rulemaking for this federal NESHAP source category at 58 FR 3092 (January 7, 1993).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NESHAP regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NESHAP regulation. Affected facilities are required to apply for construction and operating permits. The recordkeeping and reporting requirements appear at 40 CFR 61.356 and 40 CFR 61.357.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NESHAP regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NESHAP regulation, 40 CFR 61, Subpart FF, so that

Kentucky will be granted delegation of authority to implement the provisions of the federal NESHAP.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NESHAP regulation without change, which requires uniformity and allows no tailoring of requirements for benzene waste operations. The U.S. EPA does, however, exempt sources that do not exceed 2.0 Mg/yr of benzene, and has included an additional compliance option for facilities that are above the 10 Mg/yr applicability threshold. The provisions of the federal NESHAP regulation apply to owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. It also applies to treatment, storage, and disposal facilities that receive wastes from chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 112 of the Clean Air Act (42 USC 7401 et seq.), mandates the U.S. EPA to promulgate standards for emissions of hazardous air pollutants. The federal NESHAP regulation which implements this mandate is found in 40 CFR 61, Subpart FF, as published in the Code of Federal Regulations, Title 40, Parts 61 to 80, July 1, 1992, and as amended by Federal Register 58 FR 3095, (January 7, 1993). Section 112(d) of the Clean Air Act allows the U.S. EPA to delegate authority for implementing and enforcing NESHAP regulations to states.

2. State compliance standards. The federal NESHAP regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR 61, Subpart FF and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NESHAP which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. General standards appear at 40 CFR 61.342. The standards for tanks, surface impoundments, containers, individual drain systems, oil-water separators, treatment processes, closed-vent systems and control devices, appear from 40 CFR 61.343 to 40 CFR 61.349.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NESHAP regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 58:001. Definitions and abbreviations of terms used in Title 401, Chapter 58.

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 13A.222(4)(e), 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the definition of terms used in Title 401, Chapter 58.

Section 1. General Definitions. The definitions and terms used in Title 401, Chapter 58, shall have the following meanings unless the content clearly indicates otherwise.

(1) "Air pollution control equipment" means a mechanism, device, or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(2) "Cabinet" has the meaning given to it in KRS 224.01-010.

(3) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(4) "Person" has the meaning given to it in KRS 224.01-010.

(5) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401 of the regulations of the Division for Air Quality.

Section 2. Abbreviations. The abbreviations used in the regulations of Title 401, Chapter 58, shall have the following meanings:

AHERA - Asbestos Hazard Emergency Response Act

ASTM - American Society for Testing and Materials

°C - Degrees Celsius (centigrade)

CFR - Code of Federal Regulations

EPA or U.S. EPA - United States Environmental Protection Agency

°F - Degrees Fahrenheit

ft - feet

in - inches

KAR - Kentucky Administrative Regulations

KRS - Kentucky Revised Statutes

m - meters

mil - one thousandth (1/1000) of an inch

min - minutes

NIOSH - National Institute of Occupational Safety and Health

NIST - National Institute of Standards and Technology

NVLAP - National Voluntary Laboratory Accreditation Program

OSHA - Occupational Safety and Health Administration

oz - ounces

PAT - Proficiency Analytical Testing

yd - yards

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital

Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation defines the terms used in Title 401, Chapter 58 of the Kentucky Administrative Regulations for the Division for Air Quality. As such, it will affect the interpretation of common terms used throughout the regulations contained in Chapter 58.

(a) Direct and indirect costs or savings to those affected: There will be no additional costs or savings due to these amendments.

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paper work requirements.

(2) Effects on the promulgating administrative body: There are no effects on the promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings in the first year.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: No effect is anticipated on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: This administrative regulation is being proposed to comply with the requirements of KRS Chapter 13A which prohibit regulatory agencies from adopting a general definition regulation to define all the terms used in its administrative regulations. In response to these requirements, the division will promulgate definition regulations for each chapter of the division's regulations. This administrative regulation contains common definitions for Chapter 58, which will contain all the regulations dealing with asbestos.

TIERING: Was tiering applied? No. Tiering is not applicable in this administrative regulation since the regulation provides only the definitions and abbreviations for terms which are used in other regulations promulgated under Title 401, Chapter 58, by the Division for Air Quality.

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? No. This administrative regulation provides the definitions and abbreviations by which all terms in the regulations in Chapter 58 of the Division for Air Quality are to be understood.

2. State what unit, part or division of local government this administrative regulation will affect. No unit, part, or division of local government will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact on the administrative regulation.

Revenues (+/-): This administrative regulation does not affect revenues.

Expenditures (+/-): This administrative regulation does not affect expenditures.

Other Explanation: There is no additional explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. KRS Chapter 13A.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no standards or requirements contained in this administrative regulation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 58:020. Controlling asbestos emissions.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-300, 224.20-320, 224.99-010, 40 CFR 61.140 through 61.155, Subpart M, as amended by Federal Register 55 FR 48406, November 20, 1990, 763, Subpart E

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation replaces 401 KAR 57:011 and 401 KAR 63:042, which provide for the control of asbestos emissions. 401 KAR 57:011 and 401 KAR 63:042 are repealed in Section 15 of this administrative regulation.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 58:001.

(1) "ACM" means asbestos-containing material that contains more than one (1) percent asbestos by area as determined using the PLM method defined in subsection (55) of this section.

(2) "Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulate ACM. If visible dust emissions can be seen coming from a disturbance of ACM, the material has not been adequately wet.

(3) "Airlock" means an enclosure system within the containment area designed to prevent the release of asbestos emissions from one area to another. It consists of two (2) doorways separated by at least three (3) feet and made of solid construction or two (2) overlapping layers of polyethylene sheeting.

(4) "Amphibole" means a nonchrysotile asbestiform variety that cannot be adequately wet with water alone.

(5) "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

(6) "Asbestos abatement project" means a renovation or demolition at a facility which may cause a disturbance of friable ACM above the de minimis amount.

(7) "Asbestos mill" means a facility engaged in converting, or engaged in an intermediate step in converting, asbestos ore into commercial asbestos. Outside storage of ACM is not considered a part of the asbestos mill.

(8) "Asbestos tailings" means a solid waste that contains more than one (1) percent asbestos as determined using the PLM method, which is defined in subsection (55) of this section, and which is a product of asbestos mining or milling operations.

(9) "Asbestos waste from control devices" means a waste material that contains more than one (1) percent asbestos as determined using the TEM method defined in subsection (68) of this section, and which is collected by an air pollution control device.

(10) "Barrier" means a permanent wall or ceiling or, if one does not exist, a temporary partition constructed of polyethylene sheeting to contain asbestos emissions during an asbestos abatement project.

(11) "Certificate" means a permit issued by the cabinet pursuant to KRS 224.10-100 which authorizes a contractor to engage in asbestos abatement projects involving NESHAP work.

(12) "Certified contractor" means an individual or entity who is certified by the cabinet to perform asbestos abatement projects involving NESHAP work.

(13) "Clean room" means an uncontaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of workers' street clothes, clean protective equipment, and clean abatement equipment.

(14) "Clearance air monitoring" means the monitoring of air conducted inside the work area after cleanup of an asbestos abatement project has been completed.

(15) "Commercial asbestos" means a material containing asbestos that is extracted from ore and has value because of its asbestos content.

(16) "Containment area" means the enclosed, sealed area in which an asbestos abatement project is conducted. This includes but is not limited to the work area, equipment room, shower room, clean room, and all associated airlocks and waste loadouts, if these enclosures are required.

(17) "Contractor" means an individual or entity who performs the task of removing or abating asbestos at a facility during a renovation or demolition operation, including but not limited to setting up and taking down the containment, removal of friable or nonfriable ACM, application of lockdown agents, and preparing the waste for disposal. If these tasks are performed by employees of the facility owner or operator, the owner or operator is the contractor.

(18) "Critical barrier" means a sealed covering made of polyethylene sheeting used to cover windows, doorways, vents, grills or other openings to prevent the escape of asbestos fibers from the work area during an asbestos abatement project.

(19) "De minimis amount" means three (3) linear feet, or three (3) square feet, or one-half (1/2) cubic foot of ACM. Larger components, such as a ceiling tile or fire door, may be included with prior approval of the cabinet.

(20) "Demolition" means the wrecking or taking out of a load-supporting structural member of a facility, or the intentional burning of a facility. If the facility contains ACM, this term includes the removal of ACM, or components containing ACM, and all related handling operations.

(21) "Emergency renovation" means a renovation which is not planned but results from a sudden, unexpected event and which, if not immediately attended to, would likely present a safety or public health hazard, expose equipment to serious damage, or impose an unreasonable financial burden. This term does not include renovations caused by routine failures of equipment.

(22) "Encapsulant" means a material which is used to treat ACM or surfaces stripped of ACM in a manner which surrounds or embeds asbestos fibers in an adhesive matrix to prevent their release.

(23) "Equipment room" means a contaminated area or room which is part of the worker decontamination enclosure system with provisions for storage of contaminated clothing and equipment.

(24) "Fabricating" means processing of a manufactured product that contains commercial asbestos. For friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, and similar operations.

(25) "Facility" means a building, structure, installation, or network (such as pipelines or water lines), a ship, or an active or inactive waste disposal site, except as follows:

(a) A residential building having four (4) or fewer dwelling units is not considered a facility and is not subject to this administrative regulation unless:

1. It is part of a larger installation, such as an army base, company housing project, or a contiguous group of houses subject to condemnation by a federal, state, or local agency; or

2. It is to be used for an industrial, commercial, institutional, or public purpose or as a residence having more than four (4) dwelling units within one (1) year after it is renovated, or the building site is to be used for a similar purpose within one (1) year after the building is demolished.

(b) A building, structure, or installation that is used both as a facility and as a residence having four (4) or fewer dwelling units is subject to this administrative regulation only in that part which is used as a facility. Common areas such as a basement or maintenance room are treated as part of the facility.

(26) "Facility component" means any part of a facility, including equipment.

(27) "Fax" means a facsimile machine, or a device which transmits printed or other visual material over a telephone line.

(28) "Friable ACM" means ACM which, when dry, can be crumbled, pulverized, or reduced to powder by forces expected to occur during a demolition or renovation operation. This term includes normally nonfriable ACM such as packings, gaskets, resilient floor coverings, mastics, asphaltic roofing, and transite or other cementitious ACM that is in poor condition or that will become friable during the project due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, it also includes those materials that will be broken during the project.

(29) "Fugitive source" means a source of emissions not controlled by air pollution control equipment.

(30) "Glove bag" means a sealed plastic compartment at least six (6) mils thick and having one (1) or more inward-projecting longsleeve rubber gloves, and one (1) or more inward-projecting waterwand sleeves or other means of wetting the ACM to be removed. A glove bag is constructed and installed so that it surrounds the object or area from which the ACM is to be removed and contains all the asbestos fibers released during the removal process.

(31) "Grinding" means to reduce to powder or small fragments and includes mechanical chipping or drilling.

(32) "HEPA filtration" means high efficiency particulate air filtration found in respirators, vacuum systems, and negative-pressure ventilation units, which is capable of filtering particles of three-tenths microns (0.3μ) in size with 99.97 percent efficiency.

(33) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture, and is suspect ACM.

(34) "HVAC" means a heating, ventilation, and air conditioning system.

(35) "Inactive waste disposal site" means a disposal site or portion thereof where additional waste ACM has not been deposited within the past twelve (12) months.

(36) "In poor condition" means that the binding of the material is deteriorating as indicated by peeling, cracking, crumbling, or erosion.

(37) "Installation" means a building or structure or a group of buildings or structures at a single demolition or renovation site that is under the control of the same owner or operator.

(38) "Leak-tight" means that solids, liquids, or dust cannot escape or spill out.

(39) "Lockdown agent" means a protective coating or sealant which is applied to a surface from which ACM has been removed to encapsulate residual fibers.

(40) "Long-term notification" means the method used to advise the cabinet that a number of nonscheduled renovations, each of which is below the threshold amount, are expected to occur at a facility over a period of time but the specific dates are as yet unknown.

(41) "Malfunction" means a sudden and unavoidable failure of air pollution control equipment, or process equipment, or failure of a process to operate in a normal or usual manner so that asbestos emissions are increased. A failure of equipment or process is not a malfunction if it is caused by poor maintenance, careless operation, or other preventable upset condition.

(42) "Manufacturing" means the combining of commercial asbestos or, in the case of woven friction products, the combining of textiles containing commercial asbestos, with another material, including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

(43) "Mil" means one one-thousandth (1/1000) of an inch.

(44) "NESHAP" means National Emission Standards for Hazardous Air Pollutants, as set forth in 40 CFR 61, Subpart M, as amended by Federal Register 55 FR 48406, November 20, 1990.

(45) "NESHAP work" means:

1. A planned renovation at a facility, including a nonscheduled renovation carried out under a long-term notification, if the total amount of friable ACM removed in the most recent twelve (12) months, including the current work being performed, will equal or exceed the threshold amount;

2. An emergency renovation at a facility which involves the removal of friable ACM equal to or greater than the threshold amount; or

3. All demolitions at a facility.

(46) "Nonfriable ACM" means ACM which, when dry, cannot be crumbled, pulverized, or reduced to powder by forces expected to occur during a demolition or renovation operation. This term includes materials such as packings, gaskets, resilient floor coverings, mastics, asphaltic roofing, and transite or other forms of cementitious ACM which are not in poor condition and which will not become friable during the project due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, it also includes those materials which will not be broken during the project.

(47) "Nonfriable removal" means the removal of nonfriable ACM such as packings, gaskets, resilient floor coverings, mastics, asphaltic roofing, and transite or other forms of cementitious ACM which are not in poor condition and will not become friable in the removal process due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, it also includes those materials which will not be broken during the removal process.

(48) "Non-NESHAP work" means a renovation at a facility which involves the removal of any amount of nonfriable ACM, or an amount of friable ACM which, if added to the total amount of friable ACM removed in the most recent twelve (12) months, is below the threshold amount.

(49) "Nonscheduled renovation" means a renovation which is necessitated by the routine failure of equipment, and which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

(50) "Ordered demolition" means the demolition of a facility under a state or local government order issued because the facility is structurally unsound and in danger of imminent collapse.

(51) "Outside air" means the air outside buildings or structures.

(52) "Particulate ACM" means finely divided particles of asbestos or ACM.

(53) "PCM" (phase contrast microscopy) means a method used to analyze air samples for the presence of asbestos. The PCM method required for use in Section 6 of this administrative regulation is NIOSH Method 7400, which is incorporated by reference in Section 14(4) of this administrative regulation.

(54) "Planned renovation" means a renovation which is prearranged to occur during a given period of time, or which can be predicted to occur during a given period of time based on operating experience.

(55) "PLM" (polarized light microscopy) means the method required to be used to determine the percentage of asbestos by area contained in bulk samples of suspect ACM, and is specified in 40 CFR 763, Subpart F, Appendix A, Section 1, which is incorporated by reference in Section 14(2)(a) of this administrative regulation.

(56) "Polyethylene sheeting" or "polyethylene bags" means sheeting or bags made of polyethylene or equivalent material, such as griflon, which is rated at six (6) mils or more and has a true minimum thickness of four and one-half (4.5) mils.

(57) "Publicly owned facility" means a facility owned by the state, a political subdivision of the state, a municipality, or other public entity.

(58) "Remove" means to take ACM from a facility or facility component. It includes the taking of components or parts of components which are covered with or contain ACM, or the moving of these components or ACM from one place in the facility to another.

(59) "Renovation" means altering a facility or facility component, including the removal of ACM from the facility or component and any

related handling operations, without wrecking or taking out a load-supporting structural member.

(60) "Resilient floor covering" means floor tile and sheet floor covering, including associated adhesives or mastics, made from asphalt, vinyl, or other resilient material and containing more than one (1) percent asbestos as determined by PLM.

(61) "Roadway" means a surface on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

(62) "Shower room" means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.

(63) "Source" means a facility which emits or has the potential to emit airborne asbestos fibers.

(64) "Strip" means to remove ACM from a facility component. It refers to the process of removing ACM from pipes, conduits, boilers and other components, and includes the removal of paint, mastics, and floor coverings.

(65) "Structure" means a facility or building or a major portion thereof, such as a building wing or portion of a landfill where waste ACM has been deposited, or an object which has been constructed, such as a pipeline network.

(66) "Survey" means an inspection performed prior to a renovation or demolition to determine the asbestos content of all suspect material and the quantity of ACM that will be disturbed.

(67) "Suspect ACM" or "suspect material" means material which could contain or be contaminated with asbestos, including but not limited to fireproofing materials, acoustical and thermal insulation, dry-wall and surfacing materials used on walls and ceilings, resilient floor coverings, roofing materials, cement products, fire doors, tape, cloth, gaskets, and sealants.

(68) "TEM" (transmission electron microscopy) means a method used to analyze air samples, or output materials from conversion operations, for the presence of asbestos. The method required to be used for analyzing air samples in Section 6 of this administrative regulation is the AHERA method specified at 40 CFR 763, Subpart E, Appendix A, which is incorporated by reference in Section 14(2)(b) of this administrative regulation.

(69) "Threshold amount" means 260 linear feet of ACM on pipes, or 160 square feet of ACM on other components, or thirty-five (35) cubic feet of ACM which is dislodged and cannot be measured in linear or square feet.

(70) "Visible emission" mean a particulate emission, such as dust, which can be seen without the aid of instruments and which results from a process or disturbance of ACM. This includes removed friable ACM which has not been contained in leak-tight wrapping, but does not include condensed, uncombined water vapor (i.e., steam).

(71) "Waste ACM" means asbestos tailings or other waste products which contain asbestos and are generated by a source, including filters from control devices and bags or other packaging contaminated with asbestos. For demolition and renovation operations, this term includes removed friable and nonfriable ACM, contaminated debris, and materials contaminated with asbestos, such as disposable equipment and clothing, polyethylene sheeting used to contain asbestos emissions, and contaminated liquids used in the work area, shower room, and waste-loadout area.

(72) "Waste generator" means an owner or operator of a facility whose process or action, including a renovation or demolition operation, produces waste ACM.

(73) "Waste-loadout system" means that part of a containment which is separated from the work area and from the outside by airlocks with sufficient space between them to accommodate the largest waste parcel, and which is used for washing bags and loading them into containers prior to transport and disposal.

(74) "Work area" means the area within a containment where the abatement takes place, and which is separated from the decontamination and waste-loadout systems by airlocks. For removals that do not require a containment, it means the area in the immediate vicinity of the removal.

(75) "Working day" means Monday through Friday, including holidays which fall on Monday through Friday.

Section 2. Applicability. This administrative regulation shall apply to owners or operators, contractors, supervisors, laboratories, air monitoring personnel, building inspectors, training providers, waste handlers and transporters, and road construction companies, as specified in Sections 3 through 13 of this administrative regulation.

Section 3. Universal Building Standard. Owners or operators of a facility shall comply with the following:

(1) Except as noted in subsections (2) and (3) of this section, remove and dispose of any friable ACM that becomes dislodged and falls to the floors, walkways or other surfaces of a facility before allowing anyone to enter the facility except:

(a) An employee or contractor who is qualified pursuant to Section 6 of this administrative regulation to remove the ACM;

(b) A consultant hired to check for compliance with this administrative regulation; or

(c) A representative of a regulatory or law enforcement agency with authority to enter.

(2) ACM that becomes dislodged in one (1) or more portions of a large facility shall not affect the entire facility if access to the affected portions is restricted, pursuant to subsection (1) of this section.

(3) If ACM becomes dislodged in an area of a facility where evacuation of unauthorized personnel, as prescribed in subsection (1) of this section, could present a safety hazard or cause damage to equipment, the following precautions shall be taken until the ACM can be removed:

(a) The ACM shall be wetted and covered with polyethylene sheeting, unless these actions would pose a safety hazard or cause damage to equipment; and

(b) Air monitoring shall be performed in the immediate vicinity of the ACM until the ACM is removed to ensure that asbestos concentrations do not exceed levels of one (1) fiber per ten (10) cubic centimeters of all sampled air. The National Institute of Occupational Safety and Health (NIOSH) Sampling Method 7400, or equivalent, shall be used. This method is defined in Section 1(53) of this administrative regulation.

(4) ACM shall be removed and disposed of in accordance with Section 6 of this administrative regulation.

Section 4. Standard for Roadways, Insulating Materials, and Spraying Operations. (1) Standard for roadways. A person shall not construct or maintain a roadway with asbestos tailings or waste ACM unless, for asbestos tailings:

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine);

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder, and the road surface is maintained at least one (1) time per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in Section 804.04 of Standard Specifications for Road and Bridge Construction, Kentucky Transportation Cabinet, Department of Highways, 1991 Edition, which has been incorporated by reference in Section 14(6) of this administrative regulation.

(2) Standard for insulating materials. An owner or operator shall not install or reinstall on a facility or facility component insulating materials containing ACM if the materials are either molded and friable or wet-applied and friable after drying.

(3) Standard for spraying operations.

(a) An owner or operator shall not spray insulating or other

materials containing ACM on buildings, structures, pipes, conduits or other facility components, including machinery or equipment, unless:

1. The asbestos fibers in the materials are encapsulated with a bituminous or resinous binder during spraying and the materials are not friable after drying; and

2. The cabinet is notified and provided the following information at least ten (10) working days before the spraying operation begins:

a. Name, address, and telephone number of owner or operator and spraying contractor; and

b. Location of spraying operation, date it will begin, and approximate duration.

(b) For ACM sprayed on machinery or equipment, an alternative method may be approved by the cabinet if the materials are not friable after drying and if the cabinet is notified and provided the following information at least twenty (20) calendar days before the spraying operation begins:

1. Name, address, and telephone number of owner or operator and spraying contractor;

2. Location of spraying operation, date it will begin, and approximate duration; and

3. Procedures that will be followed to ensure that no visible emissions are discharged to the outside air from the spraying operation, or that the methods specified in Section 12 of this administrative regulation will be used to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

(c) Exemptions. Owners and operators of spraying operations shall be exempt from the notification and permitting requirements for construction or modification of stationary sources of 401 KAR 50:035.

Section 5. Standard for Asbestos Mills and for Manufacturing and Fabricating Operations. (1) Applicability. This section shall apply to:

(a) Owners or operators of asbestos mills;

(b) Owners or operators of manufacturing operations using commercial asbestos in the manufacture of products, including but not limited to cloth, cord, wicks, tubing, tape, twine, rope, thread, yarn, roving, lap, or other textile materials; cement products; fireproofing and insulating materials; friction products; paper, mill-board, and felt; floor coverings; paints, coatings, caulks, adhesives, and sealants; plastics and rubber materials; chlorine utilizing asbestos diaphragm technology; shotgun shell wads; and asphalt concrete; and

(c) Owners or operators of fabricating operations using commercial asbestos in the fabrication of products, including but not limited to:

1. Cement building products;

2. Friction products. This primarily consists of operations which fabricate pads and linings for brakes and clutches. It includes rebuilding operations which remove and replace worn pads and linings, but does not include service operations which only remove and install assembled parts on motor vehicles; and

3. Cement or silicate board for ventilation hoods; ovens; electrical panels; laboratory furniture; bulkheads, partitions and ceilings for marine construction; and flow control devices for the molten metal industry.

(2) Standard. Each owner or operator subject to this section shall:

(a) Discharge no visible emissions to the outside air from these operations or from a building or structure in which these operations are conducted or from any fugitive sources, or shall use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

(b) Monitor potential sources of asbestos emissions from all parts of the facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least one (1) time each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least fifteen (15) seconds duration for each source of emissions;

(c) Inspect air cleaning devices at least one (1) time a week for proper operation and for signs of potential malfunction, such as tears, holes, or abrasions in filter bags, and for dust deposits outside the bags. For air cleaning devices which cannot be inspected on a weekly basis the owner or operator shall submit to the cabinet and revise as necessary a maintenance schedule and recordkeeping plan, along with an explanation of why the device cannot be inspected weekly;

(d) Maintain records which show the results of visible emission monitoring and air cleaning device inspections, to include the following:

1. Date and time of each inspection;

2. Presence or absence of visible emissions;

3. Condition of fabric filters, including presence of any tears, holes, or abrasions;

4. Presence of dust deposits on clean side of fabric filters;

5. Brief description of malfunctions or potential malfunctions and corrective actions taken, including date and time; and

6. Daily hours of operation for each air cleaning device.

(e) Retain all maintenance records for at least two (2) years, and make them available for inspection by the cabinet upon request; and

(f) Submit a quarterly report to the cabinet for any calendar quarter in which visible emissions occur. This report shall contain all monitoring and inspection results for the entire quarter and shall be postmarked no later than thirty (30) calendar days following the end of the quarter.

(3) Owners or operators to whom this section applies shall comply with the reporting requirements in Section 13 of this administrative regulation and with the waste disposal requirements in Section 8 (for asbestos mills) and Section 9 (for manufacturing and fabricating operations) of this administrative regulation.

Section 6. Standard for Demolition and Renovation operations. (1) Applicability.

(a) This section shall apply to the following persons:

1. Owners or operators of a facility that will be demolished or renovated;

2. Contractors who perform asbestos removal or abatement, and their supervisors;

3. Air monitors who collect and analyze air samples taken during a renovation or demolition;

4. Laboratories that analyze air samples taken during a renovation or demolition;

5. Laboratories that analyze bulk samples of suspect material taken prior to or during a renovation or demolition;

6. Persons who perform asbestos surveys prior to or during a renovation or demolition;

7. Owners or operators of waste disposal sites permitted to accept waste ACM from a renovation or demolition;

8. Transporters of waste ACM taken from a renovation or demolition; and

9. Providers of training courses approved by the cabinet for contractor certification.

(b) To determine which provisions of this section apply to a specific operation, the owner or operator shall:

1. Determine the type of operation to be performed (i.e., a planned renovation, emergency renovation, or ordered demolition);

2. Determine if the operation will disturb any friable or nonfriable ACM, as prescribed in subsection (2)(a) of this section; and

3. Determine the amount of friable ACM that will be disturbed, as prescribed in subsection (2)(a) of this section, to decide if the project involves NESHAP work as defined in Section 1(45) of this administrative regulation or non-NESHAP work as defined in Section 1(48) of this administrative regulation.

4. After the above determinations have been made, the Applicability Table in paragraph (d) of this subsection shall be used to determine which provisions of this section apply to the owner or

operator and contractor.

(c) Persons other than the owner or operator, or contractor, to whom this section applies shall comply with the following provisions:

1. Air monitors who collect and analyze air samples taken during a renovation or demolition shall comply with subsections (3)(c)16, (3)(d)9, and (5)(g)5 of this section;

2. Laboratories that analyze air samples taken during a renovation or demolition shall comply with subsections (3)(c)16. (d)9, and (5)(g)6 of this section;

3. Laboratories that analyze bulk samples of suspect material taken prior to or during a renovation or demolition shall comply with subsections (2)(a)4 and (5)(g)6 of this section;

4. Persons who perform asbestos surveys prior to or during a renovation or demolition shall comply with subsection (2)(a) of this section;

5. Owners and operators of waste disposal sites permitted to accept waste ACM from a renovation or demolition shall comply with subsection (3)(c)14f and (d)7 of this section;

6. Transporters of waste ACM taken from a renovation or demolition shall comply with subsection (3)(c)14 and (d)7 of this section; and

7. Providers of training courses approved by the cabinet for contractor certification shall comply with subsection (5)(h) of this section.

(d) Applicability Table.

Type of Work	Provisions of Section 6 Which Apply to the Owner or Operator	Provisions of Section 6 Which Apply to the Contractor
NESHAP Renovations	Survey and Notification requirements in subsection (2)	Survey and Notification requirements in subsection (2)
	Removal and Supervisor requirements in subsection (3)(a) & (b)	Removal and Supervisor requirements in subsection (3)(a) & (b)
	*Work practice requirements in subsection (3)(c)1-10	Work practice requirements in subsection (3)(c), (f), (g), & (h)
	Work practice requirements in subsection (3)(c)11-14	Recordkeeping requirements in subsection (4)
	*Work practice requirements in subsection (3)(c)15-17	Certification, training, and supervisor listing requirements in subsection (5)(a)-(g)
	Work practice requirements in subsection (3)(f), (g), and (h)	
	*Recordkeeping requirements in subsection (4)	
	*Certification requirements in subsection (5)(a)-(f)	
	Training requirements in subsection (5)(g)1,2, 4,5,6	
	*Supervisor listing requirements in subsection (5)(g)3	
NESHAP Demolitions at or above Threshold	Survey and Notification requirements in subsection (2)	Survey and Notification requirements in subsection (2)
	Removal and Supervisor requirements in subsection (3)(a) & (b)	Removal and Supervisor requirements in subsection (3)(a) & (b)
	*Work practice requirements in subsection (3)(d)1-4	Work practice requirements in subsection (3)(d),(f),(g), and (h)
	Work practice requirements in subsection (3)(d)5-7	Recordkeeping requirements in subsection (4)
	*Work practice requirements in subsection (3)(d)8-10	Certification, training, and supervisor listing requirements in subsection (5)(a)-(g)
	Work practice requirements in subsection (3)(f),(g), and (h)	
	*Recordkeeping requirements in subsection (4)	
	*Certification requirements in subsection (5)(a) through (f)	
	Training requirements in subsection (5)(g)1,2, 4,5, and 6	
	*Supervisor listing requirements in subsection (5)(g)3	
Non-NESHAP Renovations and Below-Threshold Demolitions	Survey requirements in subsection (2)(a)	Survey requirements in subsection (2)(a)
	Notification requirements in subsection (2)(b), for demolitions only	Notification requirements in subsection (2)(b), for demolitions only
	*Removal requirements in subsection (3)(a)	Removal requirements in subsection (3)(a)
	*Reasonable precautions and other work-practice requirements in subsection (3)(e) through (h)	Reasonable precautions and other work-practice requirements in subsection (3)(e) through (h)
	*Recordkeeping requirements in subsection (4)	Recordkeeping requirements in subsection (4)

(*) Denotes exemption for utility companies, as provided in paragraph (e)1 of this subsection.

(e) Exemptions.

1. Facilities which qualify as utilities under KRS 224.20-320 shall be exempt from the certification, work-practice, and recordkeeping requirements that are not required under NESHAP when using their employees to perform renovations or demolitions in their facilities. These exemptions are indicated by an asterisk (*) in the Applicability Table in paragraph (d) of this subsection.

2. Owners or operators and contractors of a facility to be demolished or renovated shall be exempt from the notification and permitting requirements for construction or modification of stationary sources contained in 401 KAR 50:035, except for those renovations which qualify as a modification pursuant to 401 KAR 50:010, Section 1(33).

(2) Survey and notification requirements.

(a) Survey requirements. Before beginning a renovation or demolition operation, the owner or operator shall have a survey of suspect materials performed. A person shall not perform a survey, or cause or allow a survey to be performed, which violates a provision of this paragraph.

1. For all demolitions, and for renovations where suspect ACM to be disturbed equals or exceeds the threshold amount, the survey shall be done by an inspector or management planner who is currently accredited pursuant to 401 KAR 58:005. The AHERA inspection procedures found in 40 CFR 763, Subpart E, which are incorporated by reference in Section 14(2)(c) of this administrative regulation, shall be used for conducting the survey unless an equivalent, alternative procedure is requested by the person performing the survey and approved by the cabinet.

2. For renovations where suspect ACM to be disturbed is below the threshold amount but exceeds the de minimis amount, including renovations which qualify as NESHAP work, the survey shall:

a. Be performed by an inspector currently accredited pursuant to 401 KAR 58:005, or by a supervisor who has met the training requirements specified in subsection (5)(g)1 and 2 of this section; and

b. Include at least one (1) bulk sample for nonfriable suspect material and three (3) bulk samples for friable suspect material from each homogeneous area.

3. For renovations where suspect ACM to be disturbed will not exceed the de minimis amount, the survey may be performed by the owner or operator or his representative. At least one (1) bulk sample for suspect material shall be taken from each homogeneous area.

4. For all surveys, bulk samples of suspect ACM shall be analyzed using PLM by a laboratory which meets the requirements in subsection (5)(g)6b of this section. Homogenous areas of suspect material shall be assumed to be ACM unless all bulk samples taken of the material prove it is not.

5. Areas where bulk samples are removed during the survey shall be encapsulated or otherwise sealed to prevent fiber release.

6. If the owner or operator chooses to assume that all suspect material is ACM and treats it accordingly, and is able to determine the amount of suspect material that will be disturbed in the operation, the owner or operator shall be exempt from the requirements of this paragraph.

(b) Notification requirements. The initial notice and subsequent renotifications of a renovation or demolition operation shall be made by the owner or operator, or the contractor, and shall comply with the following:

1. Provide the cabinet with written notice of intent to demolish or renovate a facility, as required below. Notice shall be provided on Form DEP-7036, Ten Day Report Form For Prior Notification Of Asbestos Abatement Activities, which has been incorporated by reference in Section 14(1)(b) of this administrative regulation.

2. Provide a notice for all demolitions and attach a copy of the building survey, even if the inspection reveals no ACM in the facility. If ACM is present and the removal takes place more than thirty (30) calendar days before the demolition, separate notices shall be required for the removal and the demolition.

3. Provide a notice for renovations if the total amount of friable ACM removed at a facility in the most recent twelve (12) months, including the current work to be performed, will equal or exceed the threshold amount, except that:

a. Notice shall not be required for removals that do not exceed the de minimis amount; and

b. For emergency renovations, notice shall not be required unless the current work to be performed will equal or exceed the threshold amount.

4. Provide a revised notice if information contained in the initial or prior notice changes. The revised notice shall be provided before any activity involving the change begins. If there is an increase or decrease in the estimated amount of ACM to be removed, a revised notice shall be required only if the change is more than twenty (20) percent of the original estimate or more than the threshold amount, whichever is smaller.

5. Deliver initial and revised notices to the cabinet by U.S. Postal Service, commercial delivery service, or hand delivery, unless otherwise indicated, according to the following timetable:

a. Planned renovations or demolitions.

(i) If the operation is a planned demolition or a planned renovation, the initial notice shall be delivered or postmarked at least ten (10) working days but not more than thirty (30) calendar days before the operation begins. If the start date provided in the most recent notice changes to a later date, the cabinet shall be notified by phone or Fax at least one (1) working day before the old start date, and the revised written notice shall immediately follow. If the start date changes to an earlier date, the revised notice shall be delivered or postmarked at least ten (10) working days before the new start date.

(ii) If the operation is a planned renovation that will affect several locations in the facility and span several weeks or months, and removal is expected to occur each working day or on specified days, such as every Monday and Wednesday, this shall be stated on the initial notice and a written summary shall be submitted to the cabinet each month and shall be delivered or postmarked no later than ten (10) working days following the end of the month in which the activity occurred. The summary shall be submitted on Form DEP-5030, Monthly Asbestos Removal Report, which is incorporated by reference in Section 14(1)(c) of this administrative regulation. It shall include a breakdown for each day of activity showing the date, the type and amount of ACM removed, the location in the facility from which it was removed, the name of the contractor if more than one (1) contractor was provided on the initial notice, and any changes from the initial notice that would normally be reported on a revised notice.

b. Ordered demolitions or emergency renovations.

(i) For compliance with the notification requirements in this subclause only, ordered demolitions may include demolitions necessitated by a sudden, unexpected event which, if not immediately attended to, would likely present a safety or public health hazard, expose property to serious damage, or impose an unreasonable financial burden.

(ii) If the operation is an ordered demolition, or an emergency renovation which equals or exceeds the threshold amount, the cabinet shall be notified by phone or Fax no later than the day the operation begins, and a written notice shall immediately follow. If the operation begins on a nonworking day or a state holiday, notification shall be made during the first hour of business on the first working day (that is not on a state holiday) after the operation begins.

(iii) If the start date provided in the most recent notice changes, the cabinet shall be notified by phone or Fax no later than the old or new start date, whichever is earlier, and a revised written notice shall immediately follow.

c. Long-term notifications.

(i) Long-term notifications shall be delivered at least ten (10) working days but no more than thirty (30) calendar days before the effective date of the notice. A long-term notification may cover up to twelve (12) months, but shall not extend past the end of a calendar

year. It shall include only nonscheduled renovations that are below the threshold amount, and shall not include demolitions, emergency renovations, or other renovations which equal or exceed the threshold amount.

(ii) If the long-term notification includes a number of nonscheduled renovations occurring randomly throughout the notification period, an additional, separate notice shall be provided for each renovation and shall be delivered no later than one (1) working day before the renovation begins.

(iii) If the long-term notification includes a number of nonscheduled renovations occurring randomly throughout the notification period, and the contractor is located at the facility on a regular basis, separate notice shall be provided for each renovation and shall be delivered as prescribed in subclause (ii) of this clause, or may be telephoned to the appropriate regional office of the cabinet no later than one (1) working day, which is not a state holiday, before the renovation begins. A written summary shall be submitted to the cabinet each month and shall be delivered or postmarked no later than ten (10) working days following the end of the month in which the activity occurred. This summary shall be submitted on Form DEP-5030, and shall include a breakdown for each day of activity showing the date, the type and amount of ACM removed, the location in the facility from which it was removed, the name of the contractor if more than one (1) contractor was provided on the long-term notification, and any changes from the long-term notification that would normally be reported on a revised notice.

d. For nonfriable removals performed according to subsection (3)(g)1 of this section, the cabinet shall be notified at least one (1) working day but no more than thirty (30) calendar days before the operation begins. Notice may be delivered as prescribed in subparagraph 5 of this paragraph, or by Fax with a telephone call to confirm receipt of the Fax.

6. A demolition or renovation operation shall not begin or end on a date other than the date provided in the most recent notice. If the end date changes after the project has begun, the cabinet shall be notified at least one (1) working day, that is not a state holiday, prior to the old or new end date, whichever is earlier. Notice may be delivered as prescribed in subparagraph 5 of this paragraph, or by Fax with a telephone call to confirm receipt of the Fax.

7. The initial notice of a renovation or demolition operation shall be cancelled and a new ten (10) day notice shall be provided to the cabinet if:

a. The project is postponed and the new start date is unknown;

b. The project is postponed and the new start date is after the initial ending date; or

c. The project start date has been revised three (3) times.

(3) Work-practice requirements. An owner or operator, or contractor, as specified in the applicability table in subsection (1)(d) of this section, shall comply with the following:

(a)1. Remove all ACM from a facility that is to be demolished or renovated before any activity begins that will break up, dislodge, or similarly disturb the ACM, or prevent it from being removed at a later date, unless:

a. The ACM is on a facility component encased in concrete or similar material which prevents removal before demolition or renovation;

b. The ACM was not accessible for testing and was not, therefore, discovered until after demolition or renovation began and, as a result of the operation, cannot be safely removed;

c. The operation is an ordered demolition and the ACM cannot be safely removed beforehand; or

d. The operation is a normal demolition, and not an intentional burning, and the only material which tests positive for asbestos is the mastic used to secure the flooring. If the mastic is covered with flooring and is not in poor condition, the facility may be demolished without removing the mastic and all debris may be disposed in a construction/demolition landfill.

2. ACM that is not removed prior to demolition, pursuant to subparagraph 1a, b, or c of this paragraph, shall be removed and disposed during or immediately after demolition together with any contaminated debris.

3. ACM that is not removed prior to renovation, pursuant to subparagraph 1a or b of this paragraph, but is disturbed during the renovation, shall be removed and disposed as soon as practical after disturbance.

4. If a facility is intentionally burned to facilitate a demolition, all ACM, including mastics, shall be removed prior to burning.

(b) A supervisory person meeting the requirements specified in subsection (5)(g)1 and 2 of this section shall be present and available to cabinet inspectors at all times during any removal which qualifies as NESHAP work and which exceeds the de minimis amount. A diploma showing evidence of the required training shall be made available on site for inspection.

(c) The following procedures shall be used when performing a NESHAP renovation:

1. Establish a containment area to include a worker decontamination system and a work area where the removal shall occur. The decontamination system shall consist of a clean room, shower room, and equipment room, separated from each other and from the work area by airlocks. Workers leaving the work area shall progress through an airlock to the equipment room, through a second airlock to the shower room, and through a third airlock to the clean room before exiting to the outside. This system may be used for waste-loadout if each waste parcel is small enough so that no two (2) airlocks will be opened at the same time. If a waste-loadout system is used, it shall include a room for washing bags and loading them into containers for disposal, and shall be separated from the work area and from the outside by airlocks with sufficient space between them to accommodate the largest waste parcel. Water used to decontaminate personnel, equipment, or waste parcels shall be treated as waste ACM, or filtered through a five micron (5μ) filter before discharging into a sanitary sewer.

2. Existing walls and ceilings shall be used for containment barriers wherever possible. Where they do not exist, barriers shall be constructed of polyethylene sheeting attached securely in place. If wood framing is used to support the barriers, the sheeting shall be located on the side of the framing closest to the work area.

3. All furniture and other objects shall be removed from the containment area if possible, and all exposed surfaces shall be cleaned. Objects not removed shall be wet-wiped and tightly sealed with polyethylene sheeting to prevent contamination during the removal operation.

4. All openings in and adjacent to the containment area, such as windows, doorways, elevator openings, air ducts and grilles, skylights, and openings created by the construction of barriers, shall be tightly sealed with polyethylene sheeting and waterproof tape to form critical barriers. Materials to be removed shall not be covered or sealed over.

5. All polyethylene sheeting shall be secured using waterproof tape, glue, furring strips, or other means to ensure a secure, leak-tight seal. Spray polyethylene may be used in lieu of sheeting for those applications that are difficult to seal with sheeting, such as critical barriers.

6. At least two (2) layers of polyethylene sheeting shall be installed on all floor surfaces within the containment area. Sheeting shall extend at least twelve (12) inches up the sidewalls and shall be sized to minimize seams. No seams shall be located at wall-to-floor joints.

7. At least two (2) layers of polyethylene sheeting shall be installed on existing walls and ceilings within the work area and waste-loadout area. At least one (1) layer of sheeting shall be installed on polyethylene barriers and on walls and ceilings throughout the decontamination area, except that two (2) layers shall be required if this area is used for waste-loadout. Sheeting shall extend at least twelve (12) inches beyond wall-to-wall and wall-to-ceiling

joints and shall be sized to minimize seams. There shall be no seams located at wall and ceiling surface joints.

8. At least one (1) window, one (1) square foot in size or larger, shall be constructed in a safe and accessible location to permit viewing of as much of the removal activity as possible from outside the containment area.

9. All HVAC equipment opening into or passing through the containment area shall be shut down, locked out, and tagged to advise personnel not to activate the equipment. All intake and exhaust openings and seams in system components shall be tightly sealed with sheeting or spray polyethylene in accordance with subparagraph 5 of this paragraph.

10. Negative-pressure ventilation units with HEPA filtration shall be installed in the work area and operated continuously from the time the containment area is established until acceptable final clearance air monitoring results are obtained. The number of units shall be sufficient to maintain negative pressure throughout the containment area and to provide at least one (1) workplace air change every fifteen (15) minutes. Other negative-pressure air systems that are equivalent in controlling asbestos emissions may be used with prior approval of the cabinet.

11. Warning signs shall be displayed at all approaches to the containment area. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING
ARE REQUIRED IN THIS AREA

12.a. When removing or stripping friable ACM from a facility or facility component, the material shall be adequately wet prior to and during removal and carefully lowered to the ground to minimize disturbance and release of asbestos fibers. If the material being removed contains amphiboles, it shall be adequately wet using a mixture of water, surfactant, and an encapsulant. If the removal takes place more than fifty (50) feet above the ground or containerization level, the ACM shall be transported to the ground via leak-tight chutes. Mechanical man-lifts may be used in lieu of leak-tight chutes for lowering transite or similar materials that are normally nonfriable. Friable materials that are removed shall be kept adequately wet until collected and bagged for disposal.

b. Facility components that are removed intact or in sections shall be adequately wet immediately before and during the cutting or disjoining operation and shall be carefully lowered to the ground to minimize disturbance and release of asbestos fibers. Removed components shall be kept adequately wet until bagged or wrapped for disposal.

c. Facility components may be removed, transported, stored, disposed, or reused without stripping if the ACM is not damaged or disturbed, and if the component is encased in leak-tight wrapping and properly labeled when being transported, stored, or disposed. When facility components are removed in this manner and no other ACM is being removed, neither a negatively-pressurized containment nor personnel decontamination is required.

13.a. Wetting may be suspended during removal and preparation for disposal if all friable ACM is removed intact and undisturbed, and is encased in leak-tight wrapping prior to removal. Wetting may also be suspended, if an equivalent method for controlling emissions is used, when:

(i) The ambient temperature in the work area is below thirty-two (32) degrees Fahrenheit or zero degrees Centigrade;

(ii) Wetting would present a safety hazard; or

(iii) Wetting would cause damage to equipment.

b. If wetting will be suspended due to freezing temperatures, the contractor shall notify the cabinet by phone before the dry removal begins to explain the equivalent method that will be used to control emissions and to request approval for its use. If wetting will be suspended because it will present a safety hazard or cause damage to equipment, the contractor shall submit a written alternative to the cabinet at least ten (10) working days prior to the proposed dry removal and shall include a description of the proposed method which demonstrates that it is equivalent to wetting in controlling asbestos emissions.

c. The contractor shall not proceed with the dry removal until the proposed equivalent method is reviewed and approved by the cabinet.

14. Waste ACM shall be collected, prepared, transported, and disposed as follows:

a.(i) ACM that has been stripped or removed from a facility or facility component, including facility components containing ACM that have been removed intact or in sections, shall be kept adequately wet until double-wrapped or double-bagged in leak-tight polyethylene.

(ii) Waste that has been double-wrapped or double-bagged shall be placed in sealed, rigid containers (such as steel or fiber drums or heavy duty cardboard boxes) or, it may be transported using roll-off boxes, semitrailers, or other enclosed vehicles if adequate measures are taken to prevent the wrapping or bagging from rupturing during loading and unloading, transport, and disposal. Waste ACM to be placed in rigid containers may be single-bagged or single-wrapped if the container is specially designed for asbestos waste and includes a second bag for that purpose.

(iii) Bags and wrapped parcels of waste ACM shall be washed in the waste-loadout area, or in the shower room of the decontamination area if this is used for waste-loadout, before being placed in rigid containers, or before being loaded into roll-off boxes or other enclosed vehicles.

(iv) Wrapping and containerizing of waste materials shall be done in a manner which prevents the release of asbestos fibers into the outside air, and which prevents the outside of the wrapping or container from being contaminated with asbestos fibers.

b. Waste ACM that is transported and disposed off the facility site shall have a warning label and a separate label showing the name of the waste generator and the location where the waste was generated. These labels shall be applied to each rigid container if the container is disposed with the waste. Otherwise, the labels shall be applied to the bags or wrapping. For materials that are double-wrapped or double-bagged with clear polyethylene sheeting, labels shall be applied to the inside wrap or bag and shall be legible through the outer wrap or bag. Warning labels shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of three (3) feet.

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

c. Waste ACM shall be deposited as soon as is practical by the waste generator at a waste disposal site operated according to Section 10 of this administrative regulation, or at a site approved by the cabinet that converts waste ACM into nonasbestos material according to Section 7 of this administrative regulation.

d. Vehicles used to transport waste ACM shall be marked with signs during the loading and unloading of waste ACM. The warning signs used outside containment areas, as specified in paragraph (c)11 of this subsection, may be used, or separate signs may be used. If separate signs are used, they shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible

from a distance of twenty-five (25) feet.

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

e. For waste ACM transported off the facility site, the waste generator shall provide a waste shipment record to include the following information:

(i) The name, address, and telephone number of the waste generator;

(ii) The name, address, and telephone number of the cabinet;

(iii) The approximate quantity of the waste shipment in cubic feet or cubic yards;

(iv) The name and address of the disposal site;

(v) The name and telephone number of the disposal site operator;

(vi) The date transported;

(vii) The name, address, and telephone number of the transporter; and

(viii) A certification that the contents of the waste shipment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for highway transport according to applicable law and regulations.

f. The waste transporter shall provide a copy of the waste shipment record to the owner or operator of the disposal site when the waste is delivered. The owner or operator shall sign the waste shipment record and return it to the waste generator via the transporter, the U.S. Postal Service, commercial delivery service, or hand delivery. If the waste generator does not receive a copy of the waste shipment record, signed by the owner or operator of the disposal site, within thirty-five (35) calendar days of the date the waste was accepted by the initial transporter, he shall contact the transporter or the disposal site to determine the status of the shipment.

g. The waste generator shall report to the cabinet in writing if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received within forty-five (45) calendar days of the date the waste was accepted by the initial transporter. The report shall include a copy of the waste shipment record for which a confirmation of delivery was not received and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

h. The waste generator shall retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least thirty (30) years.

i. All records required under this paragraph shall, upon request, be made available to the cabinet for inspection.

15. When all ACM has been removed and prepared for disposal, the containment area shall be thoroughly cleaned. A lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers. All polyethylene sheeting on floors, ceilings, and permanent walls, except sheeting used for barriers or critical barriers, shall be removed and disposed as waste ACM according to paragraph (c)14 of this subsection. Barriers and critical barriers shall not be dismantled, nor covered objects uncovered, until acceptable final clearance air monitoring results are obtained. All exposed surfaces shall be HEPA vacuumed, wet wiped, and dried until no visible residue is observed in the work area. After wet wiping or applying lockdown, whichever is done last, at least twenty-four (24) hours shall be allowed for drying before final clearance air samples are taken, unless the air monitor who performs the final clearance sampling or a cabinet inspector has observed and verified that sufficient drying has occurred.

16.a. Clearance air monitoring shall be performed by a person or entity who is not an employee or subsidiary of the owner or operator, or contractor, and whose business is not partly owned or financed by the owner or operator, or contractor. A person shall not perform air monitoring, or cause or allow air monitoring to be performed, which violates a provision of this subparagraph.

b. Persons who perform air monitoring shall have met the requirements specified in subsection (5)(g)5 of this section, and evidence showing these requirements have been met shall be requested by and provided to the owner or operator, or contractor, when the person is selected or retained and shall, upon request, be made available by the owner or operator, or contractor, for inspection by the cabinet.

c. The method used for final clearance monitoring shall either be PCM, as defined in Section 1(53) of this administrative regulation, or TEM, as defined in Section 1(68) of this administrative regulation.

d. Analysis of air samples shall be done by a person who meets the requirements in subsection (5)(g)5 of this section, and whose laboratory meets the requirements in subsection (5)(g)6 of this section. Evidence showing these requirements have been met shall be requested by and presented to the owner or operator, or contractor, and shall, upon request, be made available by the owner or operator, or contractor, for inspection by the cabinet.

e. At least five (5) samples of air per work area or one (1) sample per room, whichever is greater, shall be obtained. A sample volume sufficient to achieve analytical sensitivity equal to or below one (1) fiber per 100 cubic centimeters of sampled air shall be used. A leaf blower or similar device shall be used just prior to sampling to dislodge all ACM which may have settled in the containment area. Barriers and critical barriers shall not be dismantled nor covered items uncovered until fiber concentrations of less than or equal to one (1) fiber per 100 cubic centimeters of all sampled air have been documented. If greater concentrations are obtained, the work area shall be wet-wiped, dried, and sampled again using the above procedures until the final clearance standard is obtained.

f. Copies of the results of final clearance sampling and other required air monitoring shall be provided to the owner or operator, or contractor, and shall, upon request, be made available by the owner or operator, or contractor, for inspection by the cabinet.

17. After acceptable final clearance results are obtained, all remaining polyethylene sheeting used to contain asbestos emissions and all contaminated disposable clothing and equipment, including the five micron (5μ) water filters, shall be disposed as waste ACM as prescribed in paragraph (c)14 of this subsection.

(d) When performing a NESHAP demolition, the following procedures may be used in lieu of the procedures for NESHAP renovations contained in paragraph (c) of this subsection:

1. A decontamination system shall be set up which consists of a clean room, shower room, and equipment room, separated from each other and from the work area by airlocks. Workers leaving the work area shall progress through an airlock to the equipment room, through a second airlock to the shower room, and through a third airlock to the clean room before exiting to the outside. This system may be used for waste-loadout if each waste parcel is small enough so that no two (2) airlocks will be opened at the same time. If a waste-loadout system is to be used, it shall include a room for washing bags and loading them into containers for disposal, and shall be separated from the work area and from the outside by airlocks with sufficient space between them to accommodate the largest waste parcel. Water used to decontaminate personnel, equipment, or waste parcels shall be treated as waste ACM, or filtered through a five micron (5μ) filter before discharging into a sanitary sewer.

2. Openings in the work area, such as windows, doorways, elevator openings, air ducts and grilles, skylights, and openings created by the construction of barriers, shall be sealed with polyethylene sheeting and waterproof tape to form critical barriers. Materials to be removed shall not be covered or sealed over. Spray polyethylene may be used in lieu of sheeting for those applications that are difficult to seal with sheeting.

3. If the demolition involves a portion of a building or structure, all HVAC equipment opening into or passing through the work area but servicing areas of the building which will not be demolished shall be shut down, locked out, sealed thoroughly with polyethylene sheeting and waterproof tape, and tagged to advise personnel not to activate the equipment.

4. Negative pressure ventilation units with HEPA filtration shall be installed in the work area and operated continuously from the time the work area is sealed off and removal begins until acceptable final clearance air monitoring results are obtained. The number of units shall be sufficient to maintain negative pressure throughout the work and decontamination areas and to provide at least one (1) workplace air change every fifteen (15) minutes. Other negative-pressure air systems that are equivalent in controlling asbestos emissions may be used with prior approval of the cabinet.

5. Warning signs shall be displayed at all approaches to the containment area. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING
ARE REQUIRED IN THIS AREA

6.a. When removing or stripping friable ACM from a facility or facility component, the material shall be adequately wet prior to and during removal and carefully lowered to the ground to minimize disturbance and release of asbestos fibers. If the material being removed contains amphiboles, it shall be adequately wet using a mixture of water, surfactant, and an encapsulant. If the removal takes place more than fifty (50) feet above the ground or containerization level, the ACM shall be transported to the ground via leak-tight chutes. Mechanical man-lifts may be used in lieu of leak-tight chutes for lowering transite or similar materials that are normally nonfriable. Friable materials that are removed shall be kept adequately wet until collected and bagged for disposal.

b. Facility components that are removed intact or in sections shall be adequately wet immediately before and during the cutting or disjoining operation and shall be carefully lowered to the ground to minimize disturbance and release of asbestos fibers. Removed components shall be kept adequately wet until bagged or wrapped for disposal.

c. Facility components may be removed, transported, stored, disposed, or reused without stripping if the ACM is not damaged or disturbed, and if the component is encased in leak-tight wrapping and properly labeled when being transported, stored, or disposed. When facility components are removed in this manner and no other ACM is being removed, neither negative pressure nor personnel decontamination is required.

7. Removed materials shall be collected, prepared, transported, and disposed according to the provisions for NESHAP renovations prescribed in paragraph (c)14 of this subsection. ACM or contaminated debris which remains after the demolition, pursuant to paragraph (a) of this subsection, and which is not feasible to wrap or containerize, may be transported in bulk with prior approval of the cabinet. If the cabinet approves, the waste shall be adequately wet and transported in lined dumpsters or roll-off boxes. The liner shall be wrapped and sealed around the waste after the dumpster or roll-off box is filled, and shall be disposed along with the waste.

8. When all ACM has been removed and prepared for disposal, the work and decontamination areas shall be thoroughly cleaned. A lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers. Barriers and critical barriers shall not be dismantled nor covered items uncovered until acceptable final clearance air monitoring results are obtained. Exposed surfaces shall be HEPA vacuumed, wet-wiped, and dried until no visible residue is observed in the work area. After wet-wiping or applying lockdown, whichever is done last, at least twenty-four (24) hours shall be allowed for drying before final clearance air samples are taken, unless the air monitor who performs the final clearance sampling or a cabinet inspector has observed and verified that sufficient drying has occurred.

9. Clearance air monitoring shall be performed in accordance with the provisions for NESHAP renovations prescribed in paragraph (c)16 of this subsection.

10. After acceptable final clearance results are obtained, all remaining polyethylene sheeting used to contain asbestos emissions and all contaminated disposable clothing and equipment, including the five micron (5μ) water filters, shall be disposed as waste ACM as prescribed in paragraph (c)14.of this subsection.

(e) When performing a non-NESHAP renovation, or a demolition involving less than the threshold amount, the following reasonable precautions may be used in lieu of the procedures for performing a NESHAP renovation prescribed in paragraph (c) of this subsection, or a NESHAP demolition prescribed in paragraph (d) of this subsection:

1. Critical barriers shall be installed in the work area. Additional barriers shall be installed, if necessary, to prevent the release of asbestos emissions outside the containment area.

2. ACM and components containing ACM shall be kept adequately wet throughout the removal process until bagged or wrapped for disposal.

3. When all ACM has been removed, the work area shall be wet-wiped and HEPA-vacuumed until no visible residue remains. For renovations, a lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers.

4. Waste ACM, polyethylene sheeting, and other contaminated materials shall be collected, prepared, transported, and disposed according to the provisions for NESHAP renovations prescribed in paragraph (c)14a, b, and c of this subsection. ACM or contaminated debris which remains after a demolition, pursuant to paragraph (a) of this subsection; and which is not feasible to wrap or containerize, may be transported in bulk with prior approval of the cabinet.

(f) A glove bag may be used for stripping pipe elbows or other small components in lieu of the work-practice requirements for full or partial containments prescribed in paragraphs (c)1 through (c)10 and 15 through 17 of this subsection, paragraphs (d)1 through 4 and 8 through 10 of this subsection, or paragraph (e)1 of this subsection. The glove bag shall remain sealed throughout the stripping or removal operation and, if negative pressure is to be used, a HEPA-filtered air intake shall be installed to prevent collapse. Warning signs, as prescribed in paragraph (c)11 of this subsection, shall be posted at all approaches to the work area during glove bag operations. Abated surfaces shall be wet-wiped after removal until no visible residue remains, and a lockdown agent shall be applied to surfaces stripped of ACM which are difficult to clean, and which could contain residual fibers.

(g) Removal of nonfriable materials.

1. Removal of asbestos-containing materials that are nonfriable shall be subject to the notification requirements in subsection (2) of this section and the disposal requirements in paragraph (c)14a, b, and c of this subsection, but shall not be subject to the work practices or other controls contained in paragraphs (a) through (f) of this subsection. This includes materials such as packings, gaskets, resilient floor coverings, mastics, roofing materials, and transite or other cementitious ACM which are not in poor condition, and which will not become friable during the removal process due to sanding, grinding, crumbling, or abrading. For transite and other forms of cementitious ACM, this also includes materials which will not be

broken during the removal. The following precautions and work practices shall be followed when removing these materials:

a. Adequate wetting shall be maintained prior to and during removal of nonfriable packings and gaskets.

b. When removing nonfriable resilient floor coverings the "Recommended Work Practices for the Removal of Resilient Floor Coverings" published by the Resilient Floor Covering Institute (RFCI Work Practices) may be used in lieu of the controls prescribed in paragraphs (a) through (f) of this subsection and subparagraph 2a of this paragraph. If the RFCI Work Practices are used in lieu of the prescribed controls, the contractor shall provide a supervisor who meets the training requirements prescribed in subsection (5)(g)4 of this section. This supervisor shall be present at the work area throughout the removal, and evidence of this training shall be requested by the owner or operator and shall, upon request, be provided by the owner or operator, or the contractor, to the cabinet for inspection. The RFCI Work Practices are incorporated by reference in Section 14(5) of this administrative regulation.

c. For demolitions where the mastic used to secure the floor covering is the only suspect or confirmed ACM, and if the mastic is covered with flooring and is not in poor condition, the facility may be demolished, but not burned, without removing the mastic, and all debris may be disposed as nonasbestos waste in a construction/demolition landfill.

d. When removing nonfriable asphaltic roofing products that contain asbestos, wetting shall be required unless it poses a safety hazard. If a rotating saw blade or roof cutter is used, a protective shroud shall enclose the cutter blade, and the cut line shall be adequately wet prior to and during removal. Built-up roofing that contains asbestos felt may be transported for disposal in lined dumpsters or roll-off boxes if the liner is wrapped and sealed around the waste after the dumpster or roll-off box is filled, and the liner is disposed along with the waste.

e. Removal of nonfriable transite and other cementitious ACM shall be considered a nonfriable removal only if it can be accomplished with no breakage. If no breakage can be assured, then no controls are required except as provided in paragraph (g)1 of this subsection.

2. Removal of materials that are normally nonfriable but which have or will become friable, as defined in Section 1(28) of this administrative regulation, shall comply with all the provisions prescribed in paragraphs (a) through (f) of this subsection for friable removals except that:

a. For removal of friable floor coverings, a limited containment with critical barriers and polyethylene splash guards around the walls extending three (3) feet up from the floor may be used in lieu of the polyethylene barriers and the wall and ceiling sheeting required for full containment.

b. For removal of friable asphaltic roofing materials, a containment shall not be required. Wetting the entire surface shall be required unless it presents a safety hazard. If a rotating saw blade or roof cutter is used, a protective shroud shall enclose the cutter blade, and the cut line shall be adequately wet prior to and during removal. Built-up roofing that contains asbestos felt may be transported for disposal in lined dumpsters or roll-off boxes if the liner is wrapped and sealed around the waste after the dumpster or roll-off box is filled, and the liner is disposed along with the waste.

c. For removal of friable transite and other cementitious ACM outside buildings, a containment shall not be required, but the following precautions shall be taken to minimize breakage:

(i) Bolts, screws, or other fasteners shall be carefully removed and overlapping sheets or slabs of ACM shall be removed in reverse order of installation.

(ii) Appropriate tools shall be used, such as prying tools that are thin enough to fit under the slabs and wide enough to distribute the pulling force over a wide area.

(iii) Two (2) or more layers of polyethylene sheeting shall be spread on the ground to collect any pieces which fall.

(iv) All exposed surfaces shall be kept adequately wet with a mixture of water, surfactant, and encapsulant throughout removal, and all break points shall be adequately wet immediately after breaking.

(v) Removed ACM shall be collected and prepared for disposal as soon as possible. All broken pieces shall be kept adequately wet until collected and bagged for disposal. Small pieces shall be double-bagged and large pieces shall be double-wrapped or double-bagged for disposal.

(h) The cabinet may, on a case-by-case basis, approve the use of alternative work practices if they are as effective in preventing asbestos emissions as those prescribed in paragraphs (c) through (g) of this subsection. A contractor desiring to use an alternative work practice shall submit a proposal to the cabinet, in writing, prior to the beginning of the project. The proposal shall provide a description of the alternative work practice, a list of the prescribed work practices which the alternative will replace, an explanation of why the prescribed work practices are not feasible and how the alternative will provide equivalent control, and a statement certifying that the proposed alternative will not be in conflict with any applicable federal, state, or local law. The contractor shall not proceed with the proposed alternative until the cabinet has reviewed and approved its use.

(4) Recordkeeping requirements. Owners or operators to whom this subsection applies shall maintain records of all asbestos abatement projects performed in their facility and shall make these records available to the cabinet upon request. Contractors to whom this subsection applies shall maintain records of all asbestos abatement projects which they perform and shall make these records available to the cabinet upon request. Records shall be maintained by the owner or operator and the contractor for a period of thirty (30) years from the date of project completion for friable removals, and six (6) years from the date of completion for nonfriable removals, and shall include the following information for each project:

(a) Copies of original notification and all updates;

(b) For owners or operators, survey documentation and results of all bulk sampling;

(c) For owners or operators, name and address of contractor and responsible supervisor;

(d) For contractors, name and address of owner or operator and facility contact person, and name of responsible supervisor;

(e) Disposal receipts showing amounts of ACM disposed and name and address of disposal site; and

(f) Results of all air sampling conducted during the project.

(5) Certification and training requirements.

(a) Prohibition. Contractors subject to this subsection shall not perform NESHAP work unless a certificate has been issued to the contractor by the cabinet and is currently in force. This prohibition shall be waived only for the demonstration of compliance required in paragraph (b)6 of this subsection.

(b) Application for initial certification.

1. Contractors shall not be considered for certification unless the training requirements prescribed in paragraphs (g)1 through (g)3 of this subsection have been completed prior to filing the application.

2. Applications shall be made on Form DEP-7034, Application For Entity Certification, which has been incorporated by reference in Section 14(1)(a) of this administrative regulation, and shall include all of the information requested on the form.

3. Applications shall be signed by the contractor, and shall constitute personal affirmation that the statements made in the application are true and complete.

4. A filing fee, as specified in paragraph (e) of this subsection, shall accompany the application.

5. Within thirty (30) calendar days after receiving the application, the cabinet shall advise the applicant if the application is complete and, if not, what additional information is needed. Failure to supply information required by the cabinet shall result in denial of the application.

6. As soon as the application is deemed complete by the cabinet, the applicant shall be notified and asked to establish a date when the cabinet can witness an asbestos abatement project, either simulated or actual, performed by the contractor to demonstrate compliance with this administrative regulation. This demonstration project shall be performed no later than sixty (60) calendar days after the application is deemed complete, and all persons whose names are to be listed on the contractor's initial certificate shall be in attendance.

7. The application shall be approved or denied within thirty (30) calendar days after the demonstration project. In evaluating the application the cabinet shall consider the information contained in the application, the results of the demonstration project, the applicant's performance history during any prior term of certification, and other pertinent information available to the cabinet. The application may be denied if the cabinet determines that any provision of this or any applicable administrative regulation has not been met, or that the applicant, or the same entity using a different name, is not likely to meet the requirements of this administrative regulation. The application shall be denied if the cabinet determines that the applicant willfully made a misstatement in the application. The applicant shall be notified in writing of the cabinet's determination and, if the application is denied, the reason for denial.

8. If the application is approved the applicant shall submit the certification fee as specified in paragraph (e) of this subsection. A certificate shall be issued by the cabinet within thirty (30) calendar days of the demonstration project or receipt of the fee, whichever is later.

(c) Duration of a certificate. A certificate shall be valid for one (1) year from the date of issuance. Modifying a certificate shall have no effect on the date of expiration.

(d) Application for renewed or modified certificate. Applications for a renewed or modified certificate shall be subject to the same requirements as applications for an original certificate specified in paragraph (b) of this subsection except as follows:

1. Applications for renewal shall be submitted not less than thirty (30) calendar days nor more than ninety (90) calendar days prior to the date of expiration. Applications for modification may be submitted any time a certificate is in force.

2. The application shall be approved or denied within thirty (30) calendar days of receipt of a complete application. If the previous certificate has not expired for longer than one (1) year, then a demonstration project shall not be required. The cabinet shall consider the information contained in the application, other pertinent information that is available, and the applicant's performance history during any prior term of certification in evaluating the application. The application may be denied if the cabinet determines that any provision of this or any applicable administrative regulation has not been met, or that the applicant, or the same entity using a different name, is not likely to meet the requirements of this administrative regulation. The application shall be denied if the cabinet determines that the applicant willfully made a misstatement in the application. The applicant shall be notified in writing of the determination and, if the application is denied, the reason for denial.

3. If an application for a modified certificate is approved by the cabinet, a modified certificate shall be issued within thirty (30) calendar days of approval. If an application for a renewed certificate is approved by the cabinet, the applicant shall submit the fee for renewal of certification as specified in paragraph (e) of this subsection. Within thirty (30) calendar days of receiving this fee or approving the application, whichever is later, the renewed certificate shall be issued.

(e) Fees. All fees shall be submitted to the cabinet as a check or money order, payable to the Kentucky State Treasurer. Fees shall not be charged to a federal, state, or local government agency if their employees perform asbestos abatement projects only in publicly owned facilities, as defined in Section 1(57) of this administrative regulation.

1. Filing fee. A filing fee shall be submitted with each application for certification, renewal, or modification. This fee shall not be refunded if the application is denied or withdrawn, or if the demonstration project is not performed within sixty (60) days after the application is deemed complete. The filing fee shall be applied toward the certification or renewal fee if the application is approved and the certificate is issued.

a. The filing fee for certification shall be $100.

b. The filing fee for renewal or modification of certification shall be fifty (50) dollars.

2. Certification and renewal fees. A fee shall be submitted to the cabinet prior to the issuance of a certificate or renewed certificate. If this fee is submitted with the filing fee, it shall be refunded if the application is denied or withdrawn, or if the demonstration project is not performed within sixty (60) days after the application is deemed complete.

a. The certification fee shall be $400 plus the $100 filing fee.

b. The fee for renewal of certification shall be $200 plus the fifty (50) filing fee.

c. There shall be no fee for modifying a certificate, except the fifty (50) dollar filing fee.

(f) Revoking a certificate. The cabinet may revoke any certificate issued under the provisions of this subsection if the contractor:

1. Willfully makes a misstatement or knowingly omits information in the certification application, renewal or modification application, or in any amendment to these applications;

2. Fails to comply with the terms or conditions of the certificate; or

3. Fails to comply with the requirements of this or any applicable administrative regulation.

(g) Training requirements.

1. Each contractor shall provide at least one (1) supervisory person pursuant to subsection (3)(b) of this section. This person shall have attended an initial training course and an annual retraining course for the supervision of AHERA projects currently approved by the cabinet, or by the U.S. EPA, or by a state whose AHERA accreditation programs have U.S. EPA approval in the supervisor discipline.

2. Supervisory persons shall be required to complete a written examination approved by the cabinet, or by the U.S. EPA, or by a state whose AHERA accreditation programs have EPA approval in the supervisor discipline, at the completion of the initial and retraining courses prescribed in subparagraph 1 of this paragraph, and achieve a score of at least seventy (70) percent on the final examinations.

3. Supervisory persons shall be listed on the contractor's certificate issued by the cabinet and shall attend an orientation program sponsored by the cabinet concerning the requirements, procedures, and standards set forth in this administrative regulation. If a contractor wishes to add or delete names on the contractor's certificate prior to its expiration and subsequent renewal, he shall notify the cabinet and submit an application to modify the certificate.

4. If persons who supervise the removal of nonfriable resilient floor coverings, as prescribed in subsection (3)(g)1b of this section, are not trained and listed on a contractor's certificate as prescribed in paragraphs (g)1 through 3 of this subsection, then they shall have attended the Resilient Floor Covering Institute's eight (8) hour training course entitled "Removal of Resilient Floor Coverings" and shall have achieved a score of at least seventy (70) percent on the final examination. Information on this course may be obtained by contacting the Resilient Floor Covering Institute, 966 Hungeford Drive, Suite 12B, Rockville, MD 20850, Telephone (301) 340-8580.

5. Persons who perform air monitoring or who analyze air samples as prescribed in subsection (3)(c)16 and (d)9. of this section shall have attended the National Institute of Occupational Safety and Health (NIOSH) 582 training course and achieved a score of at least seventy (70) percent on the final examination. Information on this course may be obtained by contacting the National Institute of

Occupational Safety and Health, Division of Training and Manpower Development, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone (513) 523-8225.

6.a. Laboratories used to analyze air samples by PCM shall have successfully participated in the most current round of NIOSH's Proficiency Analytical Testing (PAT) program. Information about this program may be obtained by contacting the National Institute of Occupational Safety and Health, Division of Physical Science and Engineering, Proficiency Analytical Testing (PAT) Program, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone (513) 841-4283.

b. Laboratories used to analyze air samples by TEM, or to analyze bulk samples of suspect ACM by PLM, shall be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). Information about this program may be obtained by contacting the National Institute of Standards and Technology (NIST), Laboratory Accreditation Program, Building 411, Room A162, Gaithersville, Maryland 20899, Telephone (301) 975-4016.

(h) Training course requirements.

1. To be approved by the cabinet, the initial training course required in paragraph (g)1 of this subsection shall meet the following requirements:

a. The course shall provide at least forty (40) hours of training on the following topics:

(i) Physical characteristics of asbestos including fiber size, aerodynamic characteristics, and physical appearance;

(ii) Health hazards of asbestos;

(iii) Protective equipment used by persons working with asbestos;

(iv) Medical monitoring procedures and benefits, and employee access to medical monitoring records;

(v) Air monitoring procedures;

(vi) State-of-the-art work practices for asbestos abatement activities;

(vii) Safety hazards that may be encountered during abatement activities and how to deal with them;

(viii) Relevant federal, state, and local regulatory and recordkeeping requirements;

(ix) Contract specifications and bidding procedures, liability insurance and bonding, and legal considerations related to asbestos abatement;

(x) Establishing respiratory protection and medical surveillance programs; and

(xi) Supervisory techniques.

b. At least fourteen (14) hours of the course shall consist of hands-on training covering the topics contained in subclauses (iii), (vi), (vii), and (x) of this clause.

c. A final examination shall be given at the conclusion of the course and shall contain at least 100 multiple-choice questions covering each of the course topics.

2. To be approved by the cabinet, the annual retraining course required in paragraph (g)1 of this subsection shall provide at least eight (8) hours of training to review the initial training topics in paragraph (h)1 of this subsection, including updated information on state-of-the-art procedures and equipment, and shall review regulatory changes and interpretations. An examination shall be given at the conclusion of the retraining course and shall contain at least fifty (50) multiple-choice questions covering all of the course topics.

3. The initial and refresher courses entitled "Supervision of Asbestos Abatement Projects" as developed by the Research Institute at Georgia Institute of Technology and sponsored and approved by U.S. EPA shall satisfy the requirements for initial training and retraining courses, as specified in paragraphs (h)1 and 2 of this subsection.

4. Alternative training courses may be approved if the cabinet determines they are equivalent to the courses specified above. A prospective training course sponsor seeking approval shall submit the following information to the cabinet:

a. Name, address, phone number, and background of course sponsor;

b. Course location and fees;

c. Copies or description of all course handouts, including manuals;

d. Detailed description of course content and the amount of time allotted to each major topic;

e. Description of teaching methods to be utilized and a list of all audio-visual materials;

f. List of all personnel involved in course preparation and presentation, and a brief description of the background, special training, and qualifications of each;

g. Description of student evaluation and course evaluation methods used;

h. A copy of the written examination to be administered at the conclusion of the course;

i. A statement assuring compliance with U.S. EPA recordkeeping requirements for training providers; and

j. A numbered, sample diploma containing the training provider's name, address, and phone number, and including the graduate's name, course name, course dates, examination date, expiration date, and a statement that the graduate passed the examination with a score of seventy (70) percent or higher.

5. Prospective course sponsors shall permit the cabinet to perform on-site audits of initial and refresher supervisory training required under this paragraph. These audits may be made without forewarning, and shall be to verify information submitted for approval. Course sponsors shall accommodate these audits without charge to the cabinet.

6. The cabinet shall advise the prospective course sponsor of its determination, in writing, within ninety (90) calendar days of receipt of all information identified in paragraph (h)4 of this subsection and, if approval is denied, its reasons for denial.

7. Approved course sponsors shall permit the cabinet to perform on-site training audits of approved courses. These audits may be made without forewarning and shall be to verify the continued integrity of the course content and instruction. Course sponsors shall accommodate these audits without charge to the cabinet.

8. If the course content, instructors, methods of instruction, or other material or information submitted for approval as prescribed in paragraph (h)4 of this subsection and upon which subsequent approval was given should significantly change, the course sponsor shall submit to the cabinet for review copies or descriptions of all information or material that has changed.

9. Approvals issued under this subsection shall remain in effect as long as the cabinet is satisfied that the course continues to meet the necessary requirements. The cabinet may decide to withdraw approval of a course based on its review of information submitted under paragraph (h)8 of this subsection, or following a course audit performed under paragraph (h)7 of this subsection, or upon receipt of other evidence that the approved course no longer meets the requirements of this subsection, including evidence of fraud or misrepresentation on the part of the course sponsor. Should the cabinet decide to withdraw its approval of a course, the course sponsor shall be notified in writing of the reason for withdrawal within thirty (30) calendar days of the cabinet's decision.

Section 7. Standard for Sites that Convert Waste ACM into Nonasbestos Material. Owners or operators of a proposed facility designed to convert waste ACM into nonasbestos material shall comply with the following:

(1) Obtain prior written approval to construct and operate the facility. The following information shall be submitted to the cabinet and, if approved by U.S. EPA, shall be reviewed for approval by the cabinet:

(a) An application to construct pursuant to 401 KAR 50:035, and a description of:

1. Waste feed handling and temporary storage;
2. Process operating conditions;
3. Handling and temporary storage of the end product; and
4. Protocol to be followed when analyzing output materials using TEM.

(b) Performance test protocol, including provisions for obtaining information required under subsection (2) of this section. The cabinet may require that a demonstration of the process be performed prior to approval of the application to construct.

(2) Conduct a startup performance test. Test results shall include:

(a) A detailed description of the types and quantities of nonasbestos material and waste ACM to be processed. Test feed shall include the full range of materials that will be encountered in actual operation of the process.

(b) Results of analyses, using PLM, showing asbestos content of the wastes processed.

(c) Results of analyses, using TEM, showing output materials are free of asbestos. Samples for analysis shall be collected as eight (8) hour composite samples (one (1) seven (7) ounce sample per hour), beginning with the initial introduction of waste ACM and continuing until the end of the performance test.

(d) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos materials. Limits shall be specified for each operating parameter within which the process will produce nonasbestos materials.

(e) The length of the test.

(3) Perform the following functions during the initial ninety (90) days of operation:

(a) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos output material.

(b) During start-up performance tests, monitor input materials to ensure that they are consistent with the test feed materials described in subsection (2)(a) of this section.

(c) Collect and analyze samples, taken as ten (10) day composite samples (one (1) seven (7) ounce sample collected every eight (8) hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than ten (10) days. TEM shall be used to analyze the output material for the presence of asbestos. During the initial ninety (90) day period, all output materials shall be stored on site until analysis shows the material to be asbestos-free, or they shall be disposed as waste ACM according to Section 9 of this administrative regulation.

(4) Perform the following functions after the initial ninety (90) days of operation:

(a) Continuously monitor and record the operating parameters identified during start-up performance testing and subsequent performance testing. Output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos output materials shall be:

1. Disposed as waste ACM according to Section 9 of this administrative regulation;
2. Recycled as waste feed during process operation within the established range of operating conditions; or
3. Stored temporarily on site in a leak-tight container until analyzed for asbestos content. Product material that is not asbestos-free shall be disposed as waste ACM or recycled as waste feed to the process.

(b) Collect and analyze monthly composite samples (one (1) seven (7) ounce sample collected every eight (8) hours of operation) of the output material. TEM shall be used to analyze the output material for the presence of asbestos.

(5) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

(6) Maintain the following records on site for at least two (2) years:

(a) Results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials;

(b) Results of the composite analyses required during the initial ninety (90) days of operation;

(c) Results of the monthly composite analyses;

(d) Results of continuous monitoring and logs of process operating parameters;

(e) Shipments received as required in Section 10 of this administrative regulation; and

(f) If analyses of the output materials were not performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which the output materials were sold or deposited and the date of sale or disposal.

(7) Submit the following reports to the cabinet:

(a) A report for each analysis of product composite samples performed during the initial ninety (90) days of operation; and

(b) A report each quarter of operation to include the following:

1. Results of analyses of product composite samples, by month;
2. A description of any deviation from the operating parameters established during performance testing, the duration of the deviation, and steps taken to correct the deviation;
3. The disposition of any product produced during a period of deviation, showing whether it was recycled, disposed as waste ACM, or stored temporarily on site until analyzed for asbestos content; and
4. Information on disposal activities as required in Section 10 of this administrative regulation.

(8) Nonasbestos output material shall not be subject to this administrative regulation. Output materials in which asbestos is detected or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by TEM analysis to be asbestos-free, shall be considered waste ACM and shall either be handled and disposed according to Sections 9 and 10 of this administrative regulation, or be reprocessed while all of the established operating parameters are being met.

(9) Owners or operators of facilities subject to this section shall also comply with the reporting requirements in Section 13 of this administrative regulation.

Section 8. Standard for Waste Disposal for Asbestos Mills. Owners or operators of asbestos mills shall comply with the following provisions:

(1) Discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor; or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air;

(2) Discharge no visible emissions to the outside air during the collection, processing, packaging, or on-site transporting of any waste ACM, or use one (1) of the disposal methods specified in paragraphs (a), (b), (c) or (d) of this subsection.

(a)1. Adequately mix all waste ACM with a wetting agent recommended by the manufacturer of the agent to effectively wet dust and tailings before depositing the material at a waste disposal site. The owner or operator shall use an agent recommended for the particular dust by the agent manufacturer and shall discharge no visible emissions to the outside air from the wetting operation, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air.

2. Wetting may be suspended when the ambient temperature at the waste disposal site is less than minus nine and one-half (-9.5) degrees Centigrade (fifteen (15) degrees Fahrenheit), as determined by an appropriate measurement method with an accuracy of plus or

minus one (1) degree Centigrade (plus or minus two (2) Fahrenheit). During periods when wetting operations are suspended, the temperature shall be recorded at least at hourly intervals, and records shall be retained for at least two (2) years.

(b) Prepare the waste ACM as follows:

1. Mix control device asbestos waste to form a slurry; adequately wet other waste ACM;

2. Discharge no visible emissions to the outside air from collections, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air;

3. After wetting, seal the waste ACM in leak-tight containers while wet. If the material will not fit into containers without additional breakage, put it into leak-tight wrapping; and

4. Label the containers and wrapped materials using warning labels which display the following legend printed in letters of sufficient size and contrast so as to be legible from a distance of three (3) feet.

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD

For waste ACM to be transported off the facility site, label the containers and wrapped materials with the name of the waste generator and the location at which the waste was generated.

(c) Process waste ACM into nonfriable forms as follows:

1. Form all waste ACM into nonfriable pellets or other shapes; and

2. Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified in Section 12 of this administrative regulation to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(d) Use an alternative emission control and waste treatment method that is approved by the cabinet. If approved by U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval for an alternative method, the owner or operator shall submit a written application to the cabinet demonstrating that the proposed alternative shall:

1. Provide equivalent asbestos emissions control as the required method;

2. Be suitable for the intended application;

3. Not violate other federal, state, or local regulations; and

4. Not result in increased water pollution, land pollution, or occupational hazards.

(3) Deposit all waste ACM at a site operated according to Section 10 of this administrative regulation;

(4) If waste is transported by vehicle to a disposal site:

(a) Vehicles used to transport waste ACM shall be marked with signs during the loading and unloading of waste. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

(b) For off-site disposal, a copy of the waste shipment record described in subsection (6)(a) of this section shall be provided to the disposal site owner or operator at the same time as the waste ACM is delivered to the disposal site.

(5) For all waste ACM transported off the facility site:

(a) The waste generator shall maintain waste shipment records to include the following information:

1. The name, address, and telephone number of the waste generator;

2. The name, address, and telephone number of the cabinet;

3. The quantity of the waste ACM transported in cubic meters or cubic yards;

4. The name and telephone number of the disposal site operator;

5. The name and address of the disposal site;

6. The date transported;

7. The name, address, and telephone number of the transporter(s); and

8. A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to all applicable regulations.

(b) The waste transporter shall provide a copy of the waste shipment record to the owner or operator of the disposal site when the waste is delivered. The owner or operator shall sign the waste shipment record and return it to the waste generator via the transporter, the U.S. Postal Service, commercial delivery service, or hand delivery. If the waste generator does not receive a copy of the waste shipment record, signed by the owner or operator of the disposal site, within thirty-five (35) days of the date the waste was accepted by the initial transporter he shall contact the transporter or the disposal site to determine the status of the shipment.

(c) A report shall be made to the cabinet in writing if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within forty-five (45) days of the date the waste was accepted by the initial transporter. The report shall include a copy of the waste shipment record for which a confirmation of delivery was not received, and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(d) The waste generator shall retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least two (2) years.

(6) The waste generator shall make all records required under this section available upon request for inspection by the cabinet.

Section 9. Standard for Waste Disposal for Manufacturing, Fabricating, and Spraying Operations. Owners or operators of a manufacturing, fabricating, or spraying operation subject to Section 4 or 5 of this administrative regulation shall comply with the following provisions: -

(1) Discharge no visible emissions to the outside air during collection and processing operations, including incineration, or during the packaging or on-site transporting of any waste ACM, or use one (1) of the emission control and waste treatment methods specified in paragraphs (a), (b), or (c) of this subsection.

(a) Prepare the waste ACM as follows:

1. Mix control device asbestos waste to form a slurry; adequately wet other waste ACM;

2. Discharge no visible emissions to the outside air from collections, or use the methods specified in Section 12 of this administrative regulation to clean emissions containing particulate ACM before they escape to, or are vented to, the outside air;

3. After wetting, seal the waste ACM in leak-tight containers while wet. If the material will not fit into containers without additional breakage, put it into leak-tight wrapping; and

4. Label the containers and wrapped materials using warning labels which display the following legend printed in letters of sufficient size and contrast so as to be legible from a distance of three (3) feet.

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST

CANCER AND LUNG DISEASE HAZARD

For waste ACM to be transported off the facility site, label the containers and wrapped materials with the name of the waste generator and the location at which the waste was generated.

(b) Process waste ACM into nonfriable forms as follows:

1. Form all waste ACM into nonfriable pellets or other shapes; and

2. Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified in Section 12 of this administrative regulation to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(c) Use an alternative emission control and waste treatment method that is approved by the cabinet. If approved by U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval for an alternative method, the owner or operator shall submit a written application to the cabinet demonstrating that the proposed alternative shall:

1. Provide asbestos emissions control equivalent to the required methods;

2. Be suitable for the intended application;

3. Not violate other federal, state, or local regulations; and

4. Not result in increased water pollution, land pollution, or occupational hazards.

(2) Deposit all waste ACM as soon as is practical at:

(a) A waste disposal site operated according to Section 10 of this administrative regulation; or

(b) A site approved by the cabinet that converts waste ACM into nonasbestos material according to Section 7 of this administrative regulation.

(3) Vehicles used to transport waste ACM shall be marked with signs during the loading and unloading of waste. Signs shall be twenty (20) inches high by fourteen (14) inches wide and shall display the following legend in letters of sufficient size and contrast so as to be legible from a distance of twenty-five (25) feet.

DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

(4) For all waste ACM transported off the facility site:

(a) The waste generator shall maintain waste shipment records which include the following:

1. The name, address, and telephone number of the waste generator;

2. The name, address, and telephone number of the cabinet;

3. The approximate quantity of waste ACM in cubic yards or cubic meters;

4. The name and telephone number of the disposal site operator;

5. The name and address of the disposal site;

6. The date transported;

7. The name, address, and telephone number of the transporter(s); and

8. A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to all applicable regulations.

(b) The waste transporter shall provide a copy of the waste shipment record to the owner or operator of the disposal site when the waste is delivered. The owner or operator shall sign the waste shipment record and return it to the waste generator via the transporter, the U.S. Postal Service, commercial delivery service, or hand delivery. If the waste generator does not receive a copy of the waste shipment record, signed by the owner or operator of the disposal site, within thirty-five (35) days of the date the waste was accepted by the initial transporter he shall contact the transporter or the disposal site to determine the status of the shipment.

(c) A report shall be made to the cabinet in writing if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within forty-five (45) days of the date the waste was accepted by the initial transporter. The report shall include a copy of the waste shipment record for which a confirmation of delivery was not received, and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(d) The waste generator shall report in writing to the cabinet if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within forty-five (45) days of the date the waste was accepted by the initial transporter, and shall include in the report the following information:

1. A copy of the waste shipment record for which a confirmation of delivery was not received; and

2. A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(e) The waste generator shall retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least two (2) years.

(5) The waste generator shall make all records required under this section available upon request to the cabinet for inspection.

Section 10. Standard for Active Waste Disposal Sites. Owners or operators of active waste disposal sites that receive deposits of waste ACM from any source shall comply with the following provisions:

(1) Bags, drums, boxes or other containers of waste ACM shall be handled in a manner which prevents the container from rupturing and exposing the contents to the outside air.

(2) Waste ACM shall be covered with at least two (2) feet of compacted nonasbestos material, and this cover shall be maintained to prevent exposure and release of asbestos fibers. This cover shall be applied at the end of each operating day or at least one (1) time every twenty-four (24) hours while the site is in operation and deposits of waste ACM are being received.

(3) In lieu of the requirements specified in subsection (2) of this section, an alternative emission control and waste treatment method may be used if approved by the cabinet and the U.S. EPA. If approved by U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval of an alternative method, the owner or operator shall submit a written application to the cabinet demonstrating that the proposed alternative will:

(a) Provide asbestos emissions control equivalent to the required method;

(b) Be suitable for the intended application;

(c) Not violate other federal, state, or local regulations; and

(d) Not result in increased water or land pollution, or pose occupational or other hazards to human health or the environment.

(4)(a) Provide at least eight (8) hours of training for all workers engaged in the handling and disposal of waste ACM. This training shall include:

1. The health effects associated with exposure to asbestos;

2. Protective steps necessary to prevent undue exposure, including engineering controls and safe work practices to be used in handling and disposal;

3. The purpose, proper use, fitting, and limitations of respirators, protective clothing, and other protective devices; and

4. Federal, state, and local regulations which govern the proper handling and disposal of waste ACM.

(b) The training prescribed in paragraph (a) of this subsection

shall be provided within thirty (30) calendar days of initial assignment, and a refresher course of at least four (4) hours duration and covering the same topics shall be provided at least one (1) time each year thereafter for all workers still engaged in the handling and disposal of waste ACM. For existing employees, the initial training shall be provided within six (6) months of the effective date of this regulation.

(c) Records of initial and refresher training provided under this subsection shall be maintained at the facility for a period of at least two (2) years.

(5) For all waste ACM received:

(a) Maintain waste shipment records which include the following information:

1. The name, address, and telephone number of the waste generator;

2. The name, address, and telephone number of the transporter(s);

3. The quantity of the waste ACM received in cubic yards;

4. The date of the receipt; and

5. The receipt of friable waste ACM not sealed in leak-tight bags or containers, or the receipt of friable waste ACM in bags or containers that are improperly enclosed, damaged, or leaking. The owner or operator shall report in writing to the cabinet by the following working day the receipt of this waste, and shall submit a copy of the waste shipment record with the report;

(b) As soon as possible but no later than thirty (30) calendar days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator;

(c) Upon discovering a discrepancy between the quantity generated and the quantity received, notify the waste generator of the discrepancy. The waste generator shall attempt to resolve the discrepancy and, if the discrepancy is not resolved within fifteen (15) days after receipt of notice from the owner or operator, shall provide the cabinet and the owner or operator of the disposal site with a written report describing the discrepancy and his attempts to reconcile it, and shall submit a copy of the waste shipment record with the report.

(d) The owner or operator shall retain a copy of all records and reports required by this subsection for at least two (2) years.

(6) Maintain until closure a map or diagram of the disposal area showing the location, depth and area, and quantity in cubic yards or cubic meters of all waste ACM deposited within the disposal site.

(7) Upon closure, comply with all provisions of Section 11 of this administrative regulation, and submit to the cabinet a copy of the asbestos waste disposal records as prescribed in subsection (6) of this section.

(8) Notify the cabinet in writing at least ten (10) days prior to excavating or disturbing any waste ACM that has been deposited and covered. If the excavation date changes, renotify the cabinet at least ten (10) working days before the old or new date, whichever is sooner. Excavation shall not begin on a date other than the date specified in the most recent notice. The owner or operator shall include the following information in the notice:

(a) Scheduled starting and completion dates;

(b) Reason for disturbing the waste;

(c) Procedures to be used to control emissions while the waste is being excavated, identified, stored, transported, and ultimately disposed. If deemed necessary, the cabinet may require changes in the procedures to be used; and

(d) Location of temporary storage site and final disposal site.

(9) Furnish all records required under this section to the cabinet upon request, and make them available during normal business hours for inspection by the cabinet.

(10) Comply with the reporting requirements in Section 13 of this administrative regulation.

Section 11. Standard for Inactive Waste Disposal Sites. Owners or operators of inactive waste disposal sites that have received deposits of waste ACM from any source shall comply with the following provisions:

(1) Ensure that all waste ACM is covered with at least two (2) feet of compacted nonasbestos-containing material, and maintained to prevent exposure and release of asbestos fibers.

(2) In lieu of the procedure specified in subsection (1) of this section, an alternative emission control and waste treatment method may be used if approved by the cabinet and the U.S. EPA. If approved by U.S. EPA, the proposed alternative shall be reviewed for approval by the cabinet. To apply for approval of an alternative method, the owner or operator shall submit a written application to the cabinet demonstrating that the proposed alternative shall:

(a) Provide asbestos emission control equivalent to the required method;

(b) Be suitable for the intended application;

(c) Not violate other federal, state, or local regulations; and

(d) Not result in increased water pollution, land pollution, or occupational hazards.

(3) Notify the cabinet in writing at least ten (10) days prior to excavating or disturbing any waste ACM that has been deposited and covered. If the excavation date changes, renotify the cabinet at least ten (10) working days before the old or new date, whichever is sooner. Excavation shall not begin on a date other than the date specified in the most recent notice. The owner or operator shall include the following information in the notice:

(a) Scheduled starting and completion dates;

(b) Reason for disturbing the waste;

(c) Procedures to be used to control emissions while the waste is being excavated, identified, stored, transported, and ultimately disposed. If deemed necessary, the cabinet may require changes in the procedures to be used; and

(d) Location of any temporary storage site and the final disposal site.

(4) Within sixty (60) days after a site becomes inactive, record a notation on the deed to the facility property and on all other documents that would normally be examined during a title search. The notation shall forever advise potential purchasers that:

(a) The land has been used for the disposal of waste ACM; and

(b) The survey plot and record of the location and quantity of waste ACM disposed have been filed with the cabinet; and

(c) The site is subject to this administrative regulation.

(5) Comply with the reporting requirements in Section 13 of this administrative regulation.

Section 12. Air Cleaning. Owners or operators, or contractors who are required to use or elect to use the air cleaning methods specified in this section shall comply with the following provisions:

(1) Use fabric filter collection devices as follows:

(a) Operate the devices at a pressure drop of no more than 0.995 kilopascal (four (4) inches water gauge) measured across the filter fabric;

(b) Ensure that the air-to-cloth ratio as determined by ASTM Test Method D 737-75, Standard Test Method for Air Permeability of Textile Fabrics, which has been incorporated by reference in Section 14(3) of this administrative regulation, does not exceed thirty (30) ft/min for woven fabrics or thirty-five (35) ft/min for felted fabrics, except that up to forty (40) ft/min for woven and up to forty-five (45) ft/min for felted fabrics is allowed for filtering air from asbestos ore dryers;

(c) Ensure that felted fabric weighs at least fourteen (14) oz/yd^2 and is at least one-sixteenth (1/16) inch thick throughout; and

(d) Avoid the use of synthetic fabrics that contain fill yarn unless the yarn is spun.

(2) In lieu of the requirements specified in subsection (1) of this section, the owner or operator may:

(a) Use a HEPA filter that has at least 99.97 percent efficiency for particles of three-tenths microns (0.3μ) in size; or

(b) If the use of fabric creates a fire or explosion hazard, or the cabinet determines that a fabric filter is not feasible, the cabinet may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (forty (40) inches water gauge pressure); or

(c) If approved by U.S. EPA, the cabinet may authorize the use of alternative filtering equipment if the owner or operator demonstrates to the cabinet's satisfaction that it is equivalent to the equipment required above in filtering particulate ACM.

(3) Properly install, use, operate, and maintain all air-cleaning equipment authorized by this section. Bypass devices shall be used only during upset or emergency conditions and then only for the time required to shut down the operation generating the particulate ACM.

(4) Provide for easy inspection for faulty bags on all fabric filter collection devices.

Section 13. Reporting Requirements for New and Existing Sources. (1) Applicability. This section applies to owners or operators of asbestos mills, manufacturing and fabricating operations, active and inactive waste disposal sites, and sites that convert waste ACM into nonasbestos materials.

(2)(a) All sources which have an initial start-up date preceding the effective date of this administrative regulation shall provide the information requested in subsection (3) of this section to the cabinet, postmarked or delivered within ninety (90) days of the effective date of this administrative regulation, unless this information has already been provided to the cabinet.

(b) Sources which have an initial start-up date after the effective date of this administrative regulation shall provide the information requested in subsection (3) of this section to the cabinet, postmarked or delivered within ninety (90) days of the initial start-up date.

(3) Owners or operators of sources subject to this section shall provide the following:

(a) A description of the emission control equipment used for each process;

(b) If a fabric filter device is used to control emissions:

1. The air-to-cloth ratio in feet per minute (ft/min) or meters per minute (m/min) if the fabric filter device uses a woven fabric, and if the fabric is synthetic, whether the fill yarn is spun or not spun; and

2. If the fabric filter device uses a felted fabric, the density in ounces per square yard or grams per square meter, the minimum thickness in millimeters or inches, and the air-to-cloth ratio in feet per minute (ft/min) or meters per minute (m/min);

(c) If a HEPA filter is used to control emissions, the certified efficiency;

(d) For sources subject to Sections 8 and 9 of this administrative regulation:

1. A brief description of each process that generates waste ACM;

2. The average volume of waste ACM disposed, measured in cubic yards per day or cubic meters per day;

3. The emission control methods used in all stages of waste disposal;

4. The type of disposal site or incineration site used for ultimate disposal, the name of the site operator and the name, telephone number, and location of the disposal site; and

5. The methods used to comply with the standard.

(e) For sources subject to Sections 10 and 11 of this administrative regulation:

1. A brief description of the site; and

2. The methods used to comply with the standard.

(4) Owners or operators of sources subject to this section shall submit the information required by 401 KAR 57:005, Section 8, with the information required in paragraph (3) of this section to the cabinet.

Section 14. Materials Incorporated by Reference. (1) The following forms required to be submitted by the regulated entities are hereby incorporated by reference:

(a) Form DEP-7034, Application for Entity Certification.

(b) Form DEP-7036, Ten (10)Notice Form for Prior Notification of Asbestos Abatement Activities.

(c) Form DEP-5030, Monthly Asbestos Removal Report. Copies of these forms may be obtained between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

1. Office of the Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

2. Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41105-1507, (606) 325-8569;

3. Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 843-5475;

4. Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

5. Frankfort Regional Office, 127 Building South Annex, Suites 1 and 2, 1049 US 127 South, Frankfort, Kentucky 40601, (502) 564-3358;

6. Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

7. Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304;

8. Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(2) The following documents from the Code of Federal Regulations, effective July 1, 1990, required to be used as guidance by the regulated entities are hereby incorporated by reference:

(a) 40 CFR 763, Appendix A to Subpart F, Section 1, Polarized Light Microscopy.

(b) 40 CFR 763, Appendix A to Subpart E, Interim Transmission Electron Microscopy.

(c) 40 CFR 763.85-87, Subpart E, AHERA Inspections and Reinspections. Copies of these documents are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402. These documents are available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

(3) The following test method required to be used as guidance by the regulated entities is hereby incorporated by reference: ASTM Test Method D 737-75, Standard Test Method for Air Permeability of Textile Fabrics, June 30, 1975. Copies of this document are available for sale from ASTM, 1916 Race Street, Philadelphia, PA 19103, (215) 299-5585. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

(4) The following air sampling method required to be used as guidance by the regulated entities is hereby incorporated by reference: National Institute of Occupational Safety and Health (NIOSH) Method for Determination of Asbestos in Air Using Positive Phase Contrast Electron Microscopy, NIOSH Method 7400, Revised 5/15/89. Copies of this document are available for sale from the U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health, Cincinnati, OH. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

(5) The following document required to be used as guidance by the regulated entities is hereby incorporated by reference: Resilient Floor Covering Institute #RFCI-WP-1990, July 1990, Recommended Work Practices for the Removal of Resilient Floor Coverings. Copies of this document are available for sale from the Resilient Floor Covering Institute, 966 Hungerford Drive, Suite 12B, Rockville, MD 20850, (301) 340-8580. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection

(1) of this section.

(6) The following document from the Kentucky Transportation Cabinet, Department of Highways, required to be used as guidance by the regulated entities is hereby incorporated by reference: Standard Specifications for Road and Bridge Construction, Section 804.04, 1991 Edition. This document is available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the offices of the Division for Air Quality listed in subsection (1) of this section.

Section 15. Regulations Repealed by this Administrative Regulation. 401 KAR 57:011, Asbestos Standards, and 401 KAR 63:042, Requirements for Asbestos Abatement Entities, are hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation applies to owners or operators who manufacture or fabricate asbestos products (currently 6 in Kentucky); to owners or operators of all facilities which undergo the removal or abatement of asbestos (currently about 500 reported projects per year); to all persons who perform the removal or abatement of asbestos (currently about 130 certified contractors working in Kentucky); to the owners or operators and waste handlers at disposal sites permitted to accept asbestos waste (currently 19 permitted landfills in Kentucky); and to the building inspectors, laboratories, air monitoring personnel, and waste transporters who participate in a renovation or demolition project involving asbestos removal. It applies to asbestos mills, asbestos spraying operations, disposal operations which convert asbestos into nonasbestos material, and to road construction operations which use asbestos fillers in asphalt mix, none of which are currently doing business in Kentucky. Provisions in this administrative regulation which did not exist or which will be amended include: (1) notification and renotification requirements for demolitions and renovations, (2) recordkeeping and reporting requirements for landfills and asbestos abatement contractors, (3) waste labeling and manifesting requirements for waste generators, (4) requirements for building owners to have asbestos surveys done by accredited inspectors prior to demolition or renovation, (5) requirement for building owners to remove and dispose of nonfriable asbestos prior to demolition, (6) monitoring and record keeping requirements for asbestos milling, manufacturing, and fabricating operations, (7) requirements for removal of asbestos that becomes dislodged and falls down in a facility before allowing persons to enter, (8) training requirements for persons who collect and analyze air samples, and for landfill operators who handle asbestos waste, (9) requirements for certification or participation in federal programs for laboratories that analyze air samples or bulk material samples, (10) groundcover requirements for landfills that accept asbestos waste, and (11) notification requirements for contractors who spray asbestos on buildings or components.

(a) Direct and indirect costs or savings to those affected: The cost to asbestos mills, manufacturing and fabricating operations, and landfills to comply with the new monitoring, record keeping and reporting requirements should be negligible, as should the cost to waste generators, transporters and landfills to comply with the new waste labeling and manifesting requirements. These requirements are already customary and, in most cases, required under existing permitting regulations. The requirements for conducting the prior survey using accredited inspectors and for removing nonfriable ACM prior to demolition will impose additional costs on building owners when performing a renovation or demolition. The survey requirement will have little effect on companies that are prudent and responsible, as they are using trained professionals now to conduct surveys. At most, large companies employing their own inspectors will have to pay a nominal fee to have them certified. The cost of an adequate survey by a trained professional depends on how long it takes and how many samples are taken for analysis. Current average costs are about $35 per hour and $20 per sample. To survey a 25,000 square foot facility for renovation may average $1500, but it could range from $150 for a new and fairly simple structure to well over $5000 for a complex structure built in the fifties. Demolition surveys generally run about 30% higher than renovation surveys. The size of the facility is a factor, but survey costs are not proportional to size unless construction materials vary widely throughout the facility. The cost to remove nonfriable ACM prior to demolition will vary with the type and quantity of material and who does the work. The cost to remove 300 square feet of floor tiles in average condition can vary from $100 for a person with no experience or training to $700 for a certified contractor meeting OSHA requirements and using state-of-the-art techniques and equipment, which are not required by this administrative regulation. The average cost should be about $200 for a noncertified but conscientious worker who will meet the state requirements. While imposing additional costs, these requirements will also reduce the potential liability for building owners that often result from violations. If asbestos is undetected or ignored and is then disturbed and made friable during a renovation or demolition, the resulting penalties, lawsuits, and corrective work can easily reach hundreds of thousands of dollars.

1. First year: See discussion under (1)(a) above. Survey and removal costs are generally one (1) time occurrences.

2. Continuing costs or savings: There are no continuing costs or savings.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This administrative regulation will impose new reporting and paperwork requirements consistent with 40 CFR 61, Subpart M, as revised November 1990. The U.S. Office of Management and Budget (OMB) has approved these under the provisions of the Paperwork Reduction Act (OMB Control Number 2060-0101). These requirements are simple and minimal, and their impact on regulated entities is expected to be negligible.

(2) Effects on the promulgating administrative body: The major effect of this administrative regulation will be to clarify regulatory requirements. The major impact of these clarifications will be to facilitate compliance by the regulated community and to enhance regulatory oversight by the Division of Waste Management, which will oversee those requirements pertaining to disposal, and the Division for Air Quality, which will oversee the remaining requirements.

(a) Direct and indirect costs or savings: Beyond the savings gained for the agency through increased efficiency resulting from clarified requirements, there are no quantifiable costs or savings

expected to result from this administrative regulation.

1. First year: There are no direct or indirect costs or savings.

2. Continuing costs or savings: There are no direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no known additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This administrative regulation should not substantially alter reporting and paperwork requirements for the Division for Air Quality. (See (2)(a), above). As noted in (1)(b), above, the new reporting and paperwork requirements are OMB-approved under the federal Paperwork Reduction Act. As noted in (1), above, new record keeping and reporting requirements have been added for landfills, asbestos mills, and asbestos fabricating and manufacturing operations; and new waste labeling and manifesting requirements have been added for waste generators. The required activities are simple and minimal, and they are already customary, though not required. Additional effort by the Division for Air Quality in reviewing these records and reports is expected to be minimal, and the reviews themselves should result in improved oversight and compliance.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under its delegation of authority from the U.S. EPA, the Division for Air Quality's asbestos regulations must be at least as stringent as those contained in 40 CFR 61, Subpart M, as amended by Federal Register 55 FR 48406, November 20, 1990. One of this regulation's predecessors, 401 KAR 57:011, was identical to the federal regulation prior to the 1990 amendments. The other predecessor regulation, 401 KAR 63:042, required contractors to be certified and to use state-of-the-art abatement procedures. This proposed regulation will consolidate the two predecessor regulations in order to aid the regulated community in understanding and complying with both state and federal regulations. Alternatives are discussed in the Federal Mandate Analysis Comparison which accompanies this document.

(5) Identify any statute, rule, regulation or government policy which may overlap, duplicate, or be in conflict with this regulation. There is no conflict, overlapping, or duplication. Some of the Labor Cabinet's asbestos requirements are similar to existing provisions carried over from the predecessor regulations, but they are designed to protect the worker rather than the public or environment and they address workplace air rather than ambient air. If an abatement contractor follows best engineering controls which are standard in the industry, he should be able to comply with both sets of regulations with no duplication of effort. A provision retained from one of the predecessor regulations allows alternative work practices to be approved providing they do not conflict with other laws.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The proposed regulation is a consolidation of 401 KAR 57:011; 401 KAR 63:042; 40 CFR 61, Subpart M (amended November 1990); KRS 224:20-320 (formerly KRS 224:570); and includes a number of refinements and suggestions resulting from discussions with the regulated community and other experts in the asbestos abatement field. There was a general concensus in favor of the consolidated regulation.

TIERING: Was tiering applied? Yes. The survey and work practice requirements for small jobs (less than the threshold and de minimis amounts) and for nonfriable removals such as floor tiles, roofing shingles and transite siding are less stringent than those for large, friable removals, and the contractors who perform these lesser tasks are not required to obtain certification. In addition, utility companies are exempted from all the non-NESHAP requirements when using their own employees to do abatement work, as mandated by KRS 224.20-320. None of the NESHAP requirements are tiered.

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. Any local government involved in demolitions or renovations requiring the removal of asbestos will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. Government owned buildings where demolitions or renovations involving asbestos removal will occur, government owned landfills where asbestos is disposed, and government personnel involved in asbestos abatement work will be affected by this administrative regulation.

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 (+/-) No effect on revenues is anticipated.

Expenditures (+/-): No significant effect on expenditures is anticipated.

Other Explanation: No further explanation is required.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Most of the new or amended provisions of this administrative regulation resulted from the November 1990 amendments to 40 CFR 61, Subpart M, the federal NESHAP for asbestos. The federal asbestos NESHAP regulation is mandated under the federal Clean Air Act, which also authorizes U.S. EPA to delegate its regulatory authority to state and local agencies which have programs at least as stringent as U.S. EPA's. The Division for Air Quality held delegation of authority under 401 KAR 57:011, which will be repealed and replaced by this regulation. We must, therefore, request continuance of that delegation following promulgation of these amendments.

2. State compliance standards. Other than those portions in Section 6 of the proposed regulation which pertain exclusively to asbestos abatement contractors, and which currently exist under 401 KAR 63:042, the proposed regulation is essentially the same as the amended federal regulation except for those provisions noted in paragraph 4.

3. Minimum or uniform standards contained in the federal mandate. Federally mandated standards for abatement contractors and for landfill operators include a no-visible-emissions requirement and work practice standards designed to minimize asbestos emissions through adequate wetting and containment. Federal standards for other entities (e.g., asbestos manufacturers and fabricators) are the same as currently prescribed under 401 KAR 57:011.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The proposed regulation contains a number of provisions which are not mandated in the federal NESHAP.

(a) All of the existing work-practice and contractor certification requirements from 401 KAR 63:042, most of which are not contained in the federal NESHAP, are carried over into the proposed regulation.

(b) All asbestos, including nonfriable, must be removed before demolition, and all amounts of asbestos removed in a renovation or demolition must be disposed as asbestos waste. The federal NESHAP does not regulate nonfriable asbestos unless it becomes friable during the operation, or friable asbestos in amounts below the threshold.

(c) Reasonable precautions are required when removing nonfriable asbestos and subthreshold amounts of friable asbestos. The federal NESHAP does not regulate nonfriable asbestos or friable asbestos below the threshold.

(d) Building inspections performed prior to renovation or demolition must be done by AHERA-accredited inspectors if the removal will exceed the threshold amount of friable asbestos.

(e) Owners or operators of all facilities, including vacant or abandoned buildings, are required to remove asbestos that has become dislodged and fallen to the floors or walkways before allowing unauthorized persons to enter.

(f) Contractors performing NESHAP removals are required to renotify the division if project end dates change, or if the amount of asbestos to be removed changes by more than 20%, or more than the threshold amount, whichever is smaller. When submitting a long-term (blanket) notification, they are also required to renotify the division for each separate removal that occurs, or, in cases where several removals are performed over a long, continuous operation, to provide a monthly recap of the work performed. The federal NESHAP requires renotification only if the start date changes, or if the amount of asbestos being removed changes by more than 20%, and does not require notification of each removal within a long-term notification, or a recap of the work performed.

(g) If wetting asbestos prior to removal cannot be done because of freezing temperatures, an alternate method of controlling emissions is required.

(h) Persons who collect and analyze air samples at a removal operation are required to be trained, and laboratories used to analyze air samples or bulk samples of suspect material are required to meet certain accreditation or program participation requirements, depending on the type and methods of analysis performed.

(i) Training courses required for contractor certification that are approved by states with EPA delegation will be approved by the cabinet without review.

(j) Landfill operators and workers who handle asbestos waste are required to be trained. They are also required to handle bags, boxes and other containers of asbestos waste in a manner which prevents rupture and exposure, and to cover all asbestos deposits with two feet of nonasbestos material. The federal NESHAP has no training requirement, and offers operators the option of no-visible-emissions, or spraying deposits with a resinous encapsulant, or applying a 6-inch cover of nonasbestos material.

(k) Owners or operators of facilities where a demolition or renovation is performed and the contractors who perform the removals are required to keep records of asbestos removals for 30 years. There is no federal recordkeeping requirement for owners or operators, or contractors.

(l) Contractors who spray asbestos on buildings or components are required to notify the division prior to commencement of work.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Note: The responses which follow are lettered to correspond with the requirements listed above in paragraph 4.

(a) Kentucky was provided grant money by EPA to develop the work-practice and certification requirements contained in 401 KAR 63:042. Certification programs now exist in the majority of states with EPA delegation. The work-practices, which are considered state-of-the-art abatement techniques and are being taught in EPA-approved training courses around the country, are standard practice throughout most of the country.

(b) The Division for Air Quality has substantial evidence that when nonfriable asbestos is subjected to the wrecking ball, and to the forces of compacting, bulldozing, and weathering that occur in a sanitary landfill, it runs a very high risk of becoming friable. The division also has evidence of hundreds of subthreshold removals each year, which add up to tons of asbestos waste, and which should be properly disposed.

(c) It is both reasonable and prudent to take precautions when removing nonfriable asbestos to keep it from becoming friable. If it becomes friable through mishandling, then the full set of requirements would apply. This is a preventive measure to keep removal costs lower and prevent asbestos emissions.

(d) Though not yet contained in the federal NESHAP, Congress has recognized the need for this requirement and passed a statute requiring EPA to write a regulation requiring prior inspection by AHERA-accredited inspectors of all facilities except residential dwellings of less than ten units. To avoid confusion and be consistent with the federal NESHAP, the division has extended this mandate to include all facilities except residential dwellings of less than five units.

(e) This has been a requirement in Jefferson County for several years. It has worked very well, and is a reasonable and necessary provision for protecting the public health.

(f) For the division to effectively monitor compliance among the 130 abatement contractors now doing business in Kentucky, it must be aware of all changes affecting the scope and schedule of the project. In the interest of public health and state government efficiency, the division strategically targets inspections to coincide with certain critical phases of the project, and this can be done only with full knowledge of the size of the project, the starting date, and date of completion.

(g) The NESHAP requires an alternate control method to be used if wetting is suspended because it may create a safety hazard or damage equipment, but not if wetting is suspended due to freezing temperatures. The absence of any control when reasonable controls are available is unnecessarily lax and not in the public interest.

(h) The division has documented numerous complaints regarding the quality of work performed by air monitors who collect and analyze air samples, and by laboratories that analyze bulk samples of suspect materials. Since the accuracy of this work is critical to ensuring compliance, these provisions are warranted.

(i) Since establishing the state certification program for asbestos contractors, provided in 401 KAR 63:042, it has been the division's policy to review and approve all training courses required for contractor certification unless they were reviewed and approved by EPA. EPA no longer reviews these courses, and it benefits the contractors for the division to accept courses approved by states with EPA delegation under a reciprocity arrangement.

(j) The two-foot groundcover is an existing requirement for Kentucky landfills permitted to accept asbestos waste. The Division of Waste Management and Kentucky OSHA support the division's position that the training requirements are both prudent and necessary.

(k) This requirement is necessary to protect both the public and the regulated community in resolving future liability cases, since thirty years is now considered to be the latency period for developing fatal asbestos-related diseases. This requirement is also consistent with OSHA recordkeeping requirements.

(l) Though none exist to our knowledge, spraying contractors are not prohibited under the federal NESHAP and are exempt from the notification and permitting requirements for stationary sources. They are, however, subject to a number of controls and, without a notification requirement, we would be unaware of their presence and have no opportunity to monitor them for compliance.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:435. Standards of performance for small industrial-commercial-institutional steam generating units.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart Dc

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation establishes standards of performance for the control of emissions from small steam generating units. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for small industrial, commercial, and institutional steam generating units is governed by 40 CFR 60, Subpart Dc, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each steam generating unit that commences construction, modification, or reconstruction after June 9, 1989, and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr) or less, but greater than or equal to two and nine-tenths (2.9) megawatts (MW) (10 million Btu/hr).

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for fossil and nonfossil fuel-fired steam generating units used in industrial, commercial, and institutional applications, 40 CFR 60, Subpart Dc. The federal NSPS regulation applies to all new steam generating units that commenced construction, modification, or reconstruction after June 9, 1989, and that have a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu/hr) or less, but greater than or equal to 2.9 megawatts (MW) (10 million Btu/hr). Those entities subject to this federal NSPS regulation are generally divided into two distinct groups: commercial-institutional units and units which provide steam for manufacturing and production facilities. Commercial-institutional units are located at offices, apartments, hospitals, shopping centers, laundries, hotels, and schools, and are predominately found in size to be below 8.7 MW (30 million Btu/hr). Industrial units are predominately found in size to be above 8.7 MW (30 million Btu/hr). Process heaters are not subject to this federal NSPS regulation. This administrative regulation is being proposed by the cabinet so that Kentucky can be granted delegation of authority by the U.S. EPA to enforce the provisions of the federal NSPS regulation, 40 CFR 60, Subpart Dc.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 55 FR 37674 (September 12, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.48c.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth will have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart Dc, so that Kentucky will be granted delegation of authority to implement the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for small steam generating units. The U.S. EPA does, however, exempt sources that have a maximum design heat input capacity of less than 2.9 megawatts (MW) and greater than 29 megawatts (MW). The provisions of the federal NSPS regulation apply to all affected facilities that commence construction, modification, or reconstruction after June 9, 1989, and that have a maximum design heat input capacity of 29 megawatts (MW) or less, but greater than or equal to 2.9 megawatts (MW). It does not include process heaters. There is no further tiering of requirements by the state. Both small and large businesses are subject to this federal NSPS rule.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart Dc, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of emissions from all facilities affected by 40 CFR 60, Subpart Dc and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for sulfur dioxide (SO_2) appear at 40 CFR 60.42c. The standards for particulate matter (PM) appear at 40 CFR 60.43c.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:450. Standards of performance for portland cement plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart F

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:025 which provides for the control of emissions from portland cement plants. 401 KAR 59:025 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for portland cement plants is governed by 40 CFR 60, Subpart F, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in portland cement plants: kiln; clinker cooler; raw mill system; finish mill system; raw mill dryer; raw material storage; clinker storage; finished product storage; conveyor transfer points; bagging and bulk loading and unloading systems that commence construction or modification after August 17, 1971.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:025, New portland cement plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for portland cement plants, 40 CFR 60, Subpart F. The federal NSPS regulation applies to each affected facility in portland cement plants which is any kiln; clinker cooler; raw mill and finish mill system; raw mill dryer; raw material, finished product, and clinker storage; conveyor transfer points; bagging and bulk loading and unloading systems that commenced construction or modification after August 17, 1971. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart F.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in for this source category at 53 FR 50354 (December 14, 1988), and the federal final rulemaking at 54 FR 6666 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.65.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart F, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for portland cement plants. The U.S. EPA defines a portland cement plant to mean any facility manufacturing portland cement by either the wet or dry process. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after August 17, 1971, and there is no tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be

determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart F, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart F, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter emissions appear at 40 CFR 60.62. Monitoring of operations appear at 40 CFR 60.63, and test methods and procedures at 40 CFR 60.64.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:455. Standards of performance for nitric acid plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart G

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:031 which provides for the control of emissions from nitric acid plants. 401 KAR 59:031 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for nitric acid plants is governed by 40 CFR 60, Subpart G, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each nitric acid production unit that commences construction or modification after August 17, 1971.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:031, New nitric acid production units, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for each nitric acid production unit, 40 CFR 60, Subpart G. The federal NSPS regulation applies to all "weak" nitric acid production units, which are defined as any facility producing weak nitric acid (30 to 70 percent in strength) by either the pressure or atmospheric pressure process, that commenced construction or modification after August 17, 1971. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart G.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6662 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or

savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1. and 2. above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart G, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for nitric acid production units. The U.S. EPA defines a weak nitric acid production unit to mean any facility producing weak nitric acid (30 to 70 percent in strength) by either the pressure or atmospheric pressure process. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after August 17, 1971, and there is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart G, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of nitrogen oxides emissions from all facilities affected by 40 CFR 60, Subpart G and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for nitrogen oxides, expressed as NO_2 appear at 40 CFR 60.72. Test methods and procedures appear at 40 CFR 60.74.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:465. Standards of performance for hot mix asphalt facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart I

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:041 which provides for the control of emissions from hot mix asphalt facilities. 401 KAR 59:041 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for hot mix asphalt facilities is governed by 40 CFR 60, Subpart I, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992.

Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each hot mix asphalt facility that commences construction or modification after June 11, 1973, and which is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:041, New hot mix asphalt facilities, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for all hot mix asphalt facilities, 40 CFR 60, Subpart I. The federal NSPS regulation applies to each hot mix asphalt facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements that commences construction or modification after June 11, 1973. An affected facility is comprised of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart I.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking for this source category at 54 FR 6667 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart I, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for hot mix asphalt facilities.

The U.S. EPA defines a hot mix asphalt facility to mean any combination of the following that are used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after June 11, 1973, and there is no tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart I, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart I and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter (PM) appear at 40 CFR 60.92. Test methods and procedures appear at 40 CFR 60.93.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:485. Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart Kb

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:052 which provides for the control of emissions from volatile organic liquid storage vessels. 401 KAR 59:052 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for volatile organic liquid storage vessels is governed by 40 CFR 60, Subpart Kb, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each storage vessel that commences construction, reconstruction, or modification after July 23, 1984, with a capacity greater than or equal to 40 cubic meters (m^3) that is used to store volatile organic liquids (VOL's).

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:052, New volatile organic liquid storage vessels, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993
FILED WITH LRC: June 15, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for volatile organic liquid storage vessels (including petroleum liquid storage vessels), 40 CFR 60, Subpart Kb. The federal NSPS regulation applies to each storage vessel with a capacity greater than or equal to 40 cubic meters (m^3) that is used to store volatile organic liquids (VOL's) for which construction, reconstruction, or modification is commenced after July 23, 1984. The following are not subject to the General Provisions (40 CFR 60 Subpart A) or the provisions of this Subpart, except as specified in paragraphs (a) and (b) of 40 CFR 60.116b which relates to the monitoring of operations: storage vessels with design capacity less than 75 m^3; vessels either with a capacity greater than or equal to 151 m^3 storing a liquid with a maximum true vapor pressure less than 3.5 kPa, or with a capacity greater than or equal to 75 m^3 but less than 151 m^3 storing a liquid with a maximum true vapor pressure less than 15.0 kPa. This federal subpart also does not apply to the following: vessels at coke oven by-product plants; pressure vessels designed to operate in excess of 204.9 kPa and without emissions to the atmosphere; vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships; vessels with a design capacity less than or equal to 1,589,874 m^3 used for petroleum or condensate stored, processed, or treated, prior to custody transfer; vessels located at bulk gasoline plants; storage vessels located at gasoline service stations; and vessels used to store beverage alcohol. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart Kb.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in for this source category at 52 FR 11420 (April 8, 1987), and the federal final rulemaking at 54 FR 32972 (August 11, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits. The reporting and recordkeeping requirements appear at 40 CFR 60.115b.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart Kb, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for volatile organic liquid storage vessels. The U.S. EPA does, however, divide the VOL storage vessel population by size and construction dates and has provided separate federal rules for each division. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction, reconstruction, or modification after July 23, 1984, and that have a capacity greater than or equal to 40 cubic meters (m^3) that are used to store volatile organic liquids (VOL's). There is no further tiering of requirements by the state. Multiple exemptions apply to this federal Subpart. Please see item (1) of this Regulatory Impact Analysis.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the

administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart Kb, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compound (VOC) emissions from all facilities affected by 40 CFR 60, Subpart Kb, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for volatile organic compound (VOC) emissions appear at 40 CFR 60.112b. Testing and procedures appear at 40 CFR 60.113b.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:490. Standards of performance for secondary lead smelters.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart L

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:055 which provides for the control of emissions from secondary lead smelters. 401 KAR 59:055 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for secondary lead smelters is governed by 40 CFR 60, Subpart L, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in secondary lead smelters: pot furnaces of more than 250 kg (550 lb) charging capacity, blast (cupola) furnaces, and reverberatory furnaces that commences construction or modification after June 11, 1973.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:055, New secondary lead smelters, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for secondary lead smelters 40 CFR 60, Subpart L. The federal NSPS regulation applies to each affected facility which is comprised of pot furnaces of more than 250 kg (550 lb) charging capacity, blast (cupola) furnaces, and reverberatory furnaces that commences construction or modification after June 11, 1973. A secondary lead smelter is any facility that produces lead from a leadbearing scrap material by smelting to the metallic form. Reverberatory furnaces are stationary, rotating, rocking, and tilting types. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart L.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking at 54 FR 6667 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart L, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for secondary lead smelters. The U.S. EPA does, however, exempt pot furnaces of less than 250 kg (550 lb) charging capacity. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after June 11, 1973, and includes pot furnaces of more than 250 kg (550 lb) charging capacity, blast (cupola) furnaces, and reverberatory furnaces. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart L, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart L, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter emissions appear at 40 CFR 60.122. Test methods and procedures appear at 40 CFR 60.123.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:495. Standards of performance for secondary brass and bronze production plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart M

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:061 which provides for the control of emissions from secondary brass and bronze production plants. 401

KAR 59:061 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for secondary brass and bronze production plants is governed by 40 CFR 60, Subpart M, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in secondary brass or bronze production plants: reverberatory and electric furnaces of 1,000 kg (2205 lb) or greater production capacity and blast (cupola) furnaces of 250 kg/h (550 lb/h) or greater production capacity that commences construction or modification after June 11, 1973.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:061, New secondary brass and bronze production plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for secondary brass and bronze production plants 40 CFR 60, Subpart M. The federal NSPS regulation applies to each affected facility which is comprised of reverberatory and electric furnaces of 1,000 kg (2205 lb) or greater production capacity and blast (cupola) furnaces of 250 kg/h (550 lb/h) or greater production capacity that commences construction or modification after June 11, 1973. Reverberatory furnaces include stationary, rotating, rocking, and tilting types. An electric furnace means any furnace which uses electricity to produce over 50 percent of the heat required in the production of refined brass or bronze. A blast furnace is any furnace used to recover metal from slag. Furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces, are not considered to be affected facilities. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart M.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in the federal final rulemaking at 54 FR 6667 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administra-

tive regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart M, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for secondary brass and bronze production plants. The U.S. EPA does, however, exempt reverberatory and electric furnaces of less than 1,000 kg (2205 lb) production capacity and blast (cupola) furnaces of less than 250 kg/h (550 lb/h) production capacity. Furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces, are not considered to be affected facilities. The provisions of the federal NSPS regulation apply to each affected facility that commence construction or modification after June 11, 1973, and includes reverberatory and electric furnaces of 1,000 kg (2205 lb) or greater production capacity and blast (cupola) furnaces of 250 kg/h (550 lb/h) or greater production capacity. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart M, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart M, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter emissions appear at 40 CFR 60.132. Test methods and procedures appear at 40 CFR 60.133.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:500. Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart N

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:066 which provides for the control of primary emissions from basic oxygen process furnaces. 401 KAR 59:066 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for primary emissions from basic oxygen process furnaces is governed by 40 CFR 60, Subpart N, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each basic oxygen process furnace that commences construction or modification after June 11, 1973.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:066, Primary emissions from new basic oxygen process furnaces, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 14, 1993
FILED WITH LRC: June 15, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for primary emissions from basic oxygen process furnaces that commences construction or modification after June 11, 1973, 40 CFR 60, Subpart N. The federal NSPS regulation applies to each affected facility which is any furnace with a refractory lining in which molten steel is produced by charging scrap metal, molten iron, and flux materials or alloy additions into a vessel and introducing a high volume of oxygen-rich gas. Open hearth, blast, and reverberatory furnaces are not included in the definition of basic oxygen process furnaces for purposes of this federal NSPS. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart N.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 51 FR 154 (January 2, 1986) and the federal final rulemaking at 54 FR 6667 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart N, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for primary emissions from basic oxygen process furnaces. The U.S. EPA does, however, apply different standards for open hooding and closed hooding methods for controlling primary emissions for affected facilities constructed, modified, or reconstructed after January 20, 1983. Open hearth, blast, and reverberatory furnaces are not included in the federal definition of basic oxygen process furnace for this NSPS. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after June 11, 1973, and there is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart N, as published in the Code of Federal Regulations, Title 40,

Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart N, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter emissions appear at 40 CFR 60.142. Test methods and procedures appear at 40 CFR 60.144.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:505. Standards of performance for secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart Na

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:068 which provides for the control of secondary emissions from steel plants using new basic oxygen process furnaces. 401 KAR 59:068 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for secondary emissions from basic oxygen process steelmaking facilities is governed by 40 CFR Subpart Na, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in iron and steel plants: top-blown BOPF's and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPF's that commences construction, modification, or reconstruction after January 20, 1983. Any facility subject to this administrative regulation is also subject to the provisions in 401 KAR 59:500 applicable to affected facilities that commences construction, modification, or reconstruction after January 20, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:068, Secondary emissions from new basic oxygen process steelmaking facilities, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for secondary emissions from basic oxygen process steelmaking facilities that commences construction or modification after January 20, 1983, 40 CFR 60, Subpart Na. The federal NSPS regulation applies to the following affected facilities in iron and steel plants which use new basic oxygen process furnaces: top-blown basic oxygen process furnaces, hot metal transfer stations, and skimming stations used with bottom-blown basic oxygen process furnaces. Any basic oxygen process furnace subject to the provisions of this administrative regulation is subject to those provisions of 401 KAR 59:500 applicable to affected facilities that commences construction, modification, or reconstruction after January 20, 1983. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart Na.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 51 FR 154 (January 2, 1986) and the federal final rulemaking at 54 FR 6667 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart Na, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for secondary emissions from basic oxygen process steelmaking facilities. The U.S. EPA does, however, require that any affected facility subject to 40 CFR 60, Subpart Na, is subject to those provisions of Subpart N applicable to affected facilities that commence construction, modification, or reconstruction after January 20, 1983. The provisions of the federal NSPS regulation apply to the following affected facilities in an iron and steel plant: top-blown BOPF's and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPF's, that commence construction, modification, or reconstruction after January 20, 1983. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart Na, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart Na, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.142a. Monitoring of operations appear at 40 CFR 60.143a, and test methods and procedures appear at 40 CFR 60.144a.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:535. Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart T

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:131 which provides for the control of emissions from wet-process phosphoric acid plants. 401 KAR 59:131 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New

Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for wet-process phosphoric acid plants in the phosphate fertilizer industry is governed by 40 CFR Subpart T, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each wet-process phosphoric acid plant having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility includes any combination of reactors, filters, evaporators, and hot wells that commences construction or modification after October 22, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:131, New wet-process phosphoric acid plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for wet-process phosphoric acid plants in the phosphate fertilizer industry, 40 CFR 60, Subpart T. The federal NSPS regulation applies to all wet-process phosphoric acid plants that commenced construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility shall include any combination of reactors, filters, evaporators, and hot wells. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart T.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 40 FR 33153 (August 6, 1975) and the federal final rulemaking at 54 FR 6662 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change

the federal NSPS regulation, 40 CFR 60, Subpart T, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for wet-process phosphoric acid plants. The U.S. EPA does, however, exempt sources having a design capacity of less than or equal to fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day and includes small plants used for research and development of production processes. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart T, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of fluoride emissions from all facilities affected by 40 CFR 60, Subpart T, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for fluoride emissions appear at 40 CFR 60.202. Monitoring of operations appear at 40 CFR 60.203, and test methods and procedures appear at 40 CFR 60.204.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:540. Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart U

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:136 which provides for the control of emissions from superphosphoric acid plants. 401 KAR 59:136 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for superphosphoric acid plants in the phosphate fertilizer industry is governed by 40 CFR 60, Subpart U, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each superphosphoric acid plant having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility includes any combination of evaporators, hot wells, acid sumps, and cooling tanks that commences construction or modification after October 22, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:136, New superphosphoric acid plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for superphosphoric acid plants in the phosphate fertilizer industry, 40 CFR 60, Subpart U. The federal NSPS regulation applies to all superphosphoric acid plants that commenced construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility shall include any combination of evaporators, hot wells, acid sumps, and cooling tanks. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart U.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 40 FR 33153 (August 6, 1975) and the federal final rulemaking at 54 FR 6662 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart U, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for superphosphoric acid plants. The U.S. EPA does, however, exempt sources having a design capacity of less than or equal to fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day and includes small plants used for research and development processes. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart U, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of fluoride emissions from all facilities affected by 40 CFR 60, Subpart U, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for fluoride emissions appear at 40 CFR 60.212. Monitoring of operations appear at 40 CFR 60.213, and test methods and procedures appear at 40 CFR 60.214.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:545. Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart V

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:141 which provides for the control of emissions from diammonium phosphate plants. 401 KAR 59:141 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for diammonium phosphate plants in the phosphate fertilizer industry is governed by 40 CFR 60, Subpart V, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each granular diammonium phosphate plant having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility includes any combination of reactors, granulators, dryers, coolers, screens, and mills that commences construction or modification after October 22, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:141, New diammonium phosphate plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for granular diammonium phosphate plants in the phosphate fertilizer industry, 40 CFR 60, Subpart V. The federal NSPS regulation applies to all diammonium phosphate plants that commenced construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility shall include any combination of reactors, granulators, dryers, coolers, screens, and mills. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart V.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 40 FR 33153 (August 6, 1975) and the federal final rulemaking at 54 FR 6662 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day opera-

tions. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart V, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for diammonium phosphate plants. The U.S. EPA does, however, exempt sources having a design capacity of less than or equal to fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day and includes small plants used for research and development of production processes. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart V, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of fluoride emissions from all facilities affected by 40 CFR 60, Subpart V, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for fluoride emissions appear at 40 CFR 60.222. Monitoring of operations appear at 40 CFR 60.223, and test methods and procedures appear at 40 CFR 60.224.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:550. Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart W

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:146 which provides for the control of emissions from triple superphosphate plants. 401 KAR 59:146 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for triple superphosphate plants in the phosphate fertilizer industry is governed by 40 CFR 60, Subpart W, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each triple superphosphate plant having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility includes any combination of mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate that commences construction or modification

after October 22, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:146, New triple superphosphate plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for triple superphosphate plants in the phosphate fertilizer industry, 40 CFR 60, Subpart W. The federal NSPS regulation applies to all triple superphosphate plants that commenced construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. The affected facility shall include any combination of mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart W.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 40 FR 33153 (August 6, 1975) and the federal final rulemaking at 54 FR 21344 (May 17, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart W, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for triple superphosphate plants. The U.S. EPA does, however, exempt sources having a design capacity of less than or equal to fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day and includes small plants used for research and development of production processes. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after October 22, 1974, having a design capacity of more than fifteen (15) tons of equivalent phosphorus pentoxide feed per calendar day. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart W, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of fluoride emissions from all facilities affected by 40 CFR 60, Subpart W, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for fluoride emissions appear at 40 CFR 60.232. Monitoring of operations appear at 40 CFR 60.233, and test methods and procedures appear at 40 CFR 60.234.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:555. Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart X

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:150 which provides for the control of emissions from granular triple superphosphate storage facilities. 401 KAR 59:150 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for granular triple superphosphate storage facilities in the phosphate fertilizer industry is governed by 40 CFR 60, Subpart X, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each granular triple superphosphate storage facility. The affected facility includes any combination of storage or curing piles, conveyors, elevators, screens, and mills that commences construction or modification after October 22, 1974.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:150, Phosphate fertilizer industry; new granular triple superphosphate storage facilities, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative

regulation adopts without change the federal New Source Performance Standards (NSPS) for granular triple superphosphate storage facilities in the phosphate fertilizer industry, 40 CFR 60, Subpart X. The federal NSPS regulation applies to all affected facilities that commenced construction or modification after October 22, 1974 and includes any combination of storage or curing piles, conveyors, elevators, screens, and mills. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart X.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 40 FR 33153 (August 6, 1975) and the federal final rulemaking at 54 FR 6662 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart X, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for granular triple superphosphate storage facilities. The U.S. EPA defines granular triple superphosphate storage facility to mean any facility curing or storing granular triple superphosphate. The provisions of the federal NSPS regulation apply to all affected facilities that commence construction or modification after October 22, 1974, and includes any combination of storage or curing piles, conveyors, elevators, screens, and mills. There is no tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart X, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of fluoride emissions from all facilities affected by 40 CFR 60, Subpart X, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for fluoride emissions appear at 40 CFR 60.242. Monitoring of operations appear at 40 CFR 60.243, and test methods and procedures appear at 40 CFR 60.244.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:570. Standards of performance for steel plants: electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart AA

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:166 which provides for the control of emissions from steel plants using electric arc furnaces. 401 KAR 59:166 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for electric arc furnaces in steel plants is governed by 40 CFR 60, Subpart AA, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to electric arc furnaces and dust-handling systems in steel plants that commenced construction, modification, or reconstruction after October 21, 1974, and on or before August 17, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:166, Steel plants using new electric arc furnaces, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for electric arc furnaces and dust-handling systems in steel plants that produce carbon, alloy, or specialty steels,40 CFR 60, Subpart AA. The federal NSPS regulation applies to all affected facilities that commenced construction, modification, or reconstruction after October 21, 1974, and on or before August 17, 1983. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart AA.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 39 FR 37466 (October 21, 1974) and the federal final rulemaking at 54 FR 21344 (May 17, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in 49 FR 43839 (October 31, 1984) and the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed

regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart AA, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for electric arc furnaces and dust-handling systems in steel plants. The U.S. EPA does, however, exempt sources constructed before October 21, 1974 and after August 17, 1983. The provisions of the federal NSPS regulation apply to all affected facilities in steel plants that commence construction, modification, or reconstruction after October 21, 1974, and on or before August 17, 1983, that produce carbon, alloy, or specialty steels: electric arc furnaces and dust-handling systems. There is no tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart AA, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart AA, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.272. Emission monitoring appears at 40 CFR 60.273, and monitoring of operations appear at 40 CFR 60.274. Test methods and procedures appear at 40 CFR 60.275.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:575. Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart AAa

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:168 which provides for the control of emissions from steel plants using electric arc furnaces and argon-oxygen decarburization vessels. 401 KAR 59:168 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for electric arc furnaces and argon-oxygen decarburization vessels in steel plants constructed after August 17, 1983 is governed by 40 CFR 60, Subpart AAa, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems in steel plants that produce carbon, alloy, or specialty steels, that commences construction, modification, or reconstruction after August 17, 1983.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:168, Steel plants using new electric arc

furnaces and argon-oxygen decarburization vessels, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: June 14, 1993
FILED WITH LRC: June 15, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for electric arc furnaces, argon-oxygen decarburization vessels and dust-handling systems in steel plants that produce carbon, alloy, or specialty steels, 40 CFR 60, Subpart AAa. The federal NSPS regulation applies to all affected facilities that commenced construction, modification, or reconstruction after August 17, 1983. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart AAa.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 39 FR 37466 (October 21, 1974) and the federal final rulemaking at 54 FR 21344 (May 17, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in 49 FR 43839 (October 31, 1984) and the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart AAa, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No.The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems in steel plants. The U.S. EPA does, however, exempt sources constructed before August 17, 1983. The provisions of the federal NSPS regulation apply to all affected facilities in steel plants that produce carbon, alloy, or specialty steels, that commences construction, modification or reconstruction after August 17, 1983. There is no tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart AAa, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart AAa, and

provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.272a. Emission monitoring appears at 40 CFR 60.273a, and monitoring of operations appear at 40 CFR 60.274a. Test methods and procedures appear at 40 CFR 60.275a.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:580. Standards of performance for kraft pulp mills.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart BB

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:082 which provides for the control of emissions from kraft pulp mills. 401 KAR 59:082 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for kraft pulp mills is governed by 40 CFR 60, Subpart BB, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to the following affected facilities in kraft pulp mills that commences construction or modification after September 24, 1976: digester system, brown stock washer system, multiple-effect evaporator system, recovery furnace, smelt dissolving tank, lime kiln, and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of this administrative regulation are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:082, New kraft pulp plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for affected facilities in kraft pulp mills, 40 CFR 60, Subpart BB. The federal NSPS regulation applies to all of the following affected facilities that commenced construction or modification after September 24, 1976: digester system, brown stock washer system, multiple-effect evaporator system, recovery furnace, smelt dissolving tank, lime kiln, and condensate stripper system. In pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of this administrative regulation are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart BB.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 41 FR 42012 (September 24, 1976) and the federal final rulemaking at 55 FR 5211 (February 14, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in 51 FR 18539 (May 20, 1986) and the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required

of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart BB, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for kraft pulp mills. The U.S. EPA defines a kraft pulp mill to mean any stationary source which produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at high temperature and pressure; regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill. The provisions of the federal NSPS regulation apply to the following affected facilities in kraft pulp mills that commences construction or modification after September 24, 1976: digester system, brown stock washer system, multiple-effect evaporator system, recovery furnace, smelt dissolving tank, lime kiln, and condensate stripper system. Also, in pulp mills where kraft pulping is combined with neutral sulfite semichemical pulping, the provisions of this administrative regulation are applicable when any portion of the material charged to an affected facility is produced by the kraft pulping operation. There is no further tiering of requirements by the state. Exempted from these standards are black liquor oxidation systems and diffusion washers for brown stock washer systems because they represent no significant increase in uncontrolled TRS emissions of an affected facility.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart BB, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter and total reduced sulfur emissions from all facilities affected by 40 CFR 60, Subpart BB, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.282. The standards for total reduced sulfur (TRS) emissions appear at 40 CFR 60.283. Monitoring of emissions and operations appear at 40 CFR 60.284 and test methods and procedures appear at 40 CFR 60.285.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:585. Standards of performance for glass manufacturing plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart CC

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:251 which provides for the control of

emissions from glass manufacturing plants. 401 KAR 59:251 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for glass manufacturing plants is governed by 40 CFR 60, Subpart CC, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each glass melting furnace in glass manufacturing plants that commences construction or modification after June 15, 1979. The affected facility is a glass melting furnace within the following four (4) categories of glass manufacturing plants: container glass, flat glass, pressed and blown glass, and wool fiberglass.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:251, New glass manufacturing plants, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for affected facilities in glass manufacturing plants, 40 CFR 60, Subpart CC. The federal NSPS regulation applies to glass melting furnaces within the following four (4) categories of glass manufacturing plants that commenced construction or modification after June 15, 1979: container glass, flat glass, pressed and blown glass, and wool fiberglass. This federal NSPS regulation does not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day and all-electric melters. This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart CC.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 45 FR 66748 (October 7, 1980) and the federal final rulemaking at 54 FR 21344 (May 17, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in 45 FR 66748 (October 7, 1980) and the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is

promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart CC, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for glass manufacturing plants. The U.S. EPA does, however, exempt hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, and all-electric melters. The provisions of the federal NSPS regulation apply to each glass melting furnace that commences construction or modification after June 15, 1979 within the following four (4) categories of glass manufacturing plants: container glass, pressed and blown glass, flat glass, and wool fiberglass. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart CC, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart CC, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standards for particulate matter emissions appear at 40 CFR 60.292. The standards for particulate matter emissions from glass melting furnaces with modified-processes appear at 40 CFR 60.293. Test methods and procedures appear at 40 CFR 60.295.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:590. Standards of performance for grain elevators.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart DD

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:275 which provides for the control of emissions from grain elevators. 401 KAR 59:275 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for grain elevators is governed by 40 CFR 60, Subpart DD, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each affected facility at any grain terminal elevator or any grain storage elevator that commences construction, modification, or reconstruction after August 3, 1978. The affected facilities are each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer, and all grain handling operations.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:275, New grain elevators, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993
FILED WITH LRC: June 15, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for affected facilities at grain elevators, 40 CFR 60, Subpart DD. The federal NSPS regulation applies to each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer, and all grain handling operations that commenced construction, modification, or reconstruction after August 3, 1978. A grain terminal elevator means any grain elevator which has a permanent storage capacity of more than 88,100 m^3 (circa 2.5 million U.S. bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. A grain storage elevator means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of 35,200 m^3 (circa 1 million bushels). This administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart DD.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 43 FR 34347 (August 3, 1978) and the federal final rulemaking at 54 FR 6674 (February 14, 1989).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in 43 FR 34347 (August 3, 1978) and the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart DD, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for grain elevators. The U.S. EPA does, however exempt grain terminal elevators located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. The provisions of the federal NSPS regulation apply to any grain terminal elevator which has a permanent storage capacity of more than 88,100 m^3 (circa 2.5 million bushels) and any grain storage elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of 35,200 m^3 (circa 1 million bushels). The affected facility is each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer, and all grain handling operations that commences construction, modification, or reconstruction after August 3, 1978. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart DD, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of particulate matter emissions from all facilities affected by 40 CFR 60, Subpart DD, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for particulate matter emissions appear at 40 CFR 60.302. Test methods and procedures appear at 40 CFR 60.303. A discussion of modification appears at 40 CFR 60.304.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 59:595. Standards of performance for surface coating of metal furniture.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7411, 40 CFR Part 60, Subpart EE

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. The federal regulation adopted without change in this administrative regulation replaces 401 KAR 59:196 which provides for the control of emissions from metal furniture surface coating operations. 401 KAR 59:196 is repealed in Section 4 of this administrative regulation. Delegation of implementation and enforcement authority for the federal New Source Performance Standards (NSPS) regulation from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. The standards of performance for metal furniture surface coating operations is governed by 40 CFR 60, Subpart EE, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. Except for those authorities reserved in a New Source Performance Standard for the Administrator of the U.S. Environmental Protection Agency, or authorities specifically excluded from delegation by separate letters, "Administrator" and "EPA" as used in the federal New Source Performance Standard shall mean cabinet.

Section 2. Applicability. The provisions of this administrative regulation shall apply to each metal furniture surface coating operation in which organic coatings are applied that commences construction, modification, or reconstruction after November 28, 1980. Any owner or operator of a metal furniture surface coating operation that uses less than 3,842 liters of coating (as applied) per year and keeps purchase or inventory records or other data necessary to substantiate annual coating usage shall be exempt from all other provisions of this administrative regulation. These records shall be maintained at the source for a period of at least two (2) years.

Section 3. Availability of Information. (1) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) Copies of the material adopted without change in this administrative regulation shall be available for inspection and copying between the hours of 8 a.m. and 4:30 p.m. Monday through Friday at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 4. 401 KAR 59:196, New metal furniture coating operations, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This administrative regulation adopts without change the federal New Source Performance Standards (NSPS) for metal furniture surface coating operations, 40 CFR 60, Subpart EE. The federal NSPS regulation applies to each surface coating operation on a metal furniture surface coating line used to apply and dry or cure an organic coating. The affected facility may be either a prime coat or a top coat operation and includes the coating application stations, flash-off area, and curing oven that commenced construction, modification, or reconstruction after November 28, 1980. A metal furniture surface coating operation that uses less than 3,842 liters of coating (as applied) per year shall be exempt from the provisions of this administrative regulation. The owner or operator of the facility must maintain records at the source to substantiate the annual coating usage for at least two years. This

administrative regulation is being proposed by the cabinet so that Kentucky can continue to enforce the federal NSPS regulation, 40 CFR 60, Subpart EE.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no first year costs or savings beyond those which are described in 47 FR 49287 (October 29, 1982) and the federal final rulemaking at 55 FR 51383 (December 30, 1990).

2. Continuing costs or savings: There are no continuing costs or savings beyond those which are described in the final rulemaking of the federal NSPS regulation.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): This administrative regulation does not represent any economic disadvantage to Kentucky business because sources in Kentucky are subject to the same provisions as required of all other sources in the country.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements beyond those required in the federal NSPS regulation. Affected facilities are required to apply for construction and operating permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes construction and operating permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources for air pollutants and maintains an emissions inventory for each facility. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each facility as stated in 1 and 2 above.

(3) Assessment of anticipated effect on state and local revenues: There are no additional factors increasing or decreasing costs.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation. Kentucky is promulgating this administrative regulation so that the Commonwealth can continue to have the delegated authority to enforce the provisions of the federal NSPS regulation and so that sources will be able to work with the state to obtain the necessary permits rather than the federal government.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: The administrative regulation is not in conflict.

(6) Any additional information or comments: The cabinet is promulgating this administrative regulation to adopt without change the federal NSPS regulation, 40 CFR 60, Subpart EE, so that Kentucky can continue to enforce the provisions of the federal NSPS.

TIERING: Was tiering applied? No. The cabinet is adopting this federal NSPS regulation without change, which requires uniformity and allows no tailoring of requirements for metal furniture surface coating operations. The U.S. EPA does, however, exempt sources that use less than 3,842 liters of coating (as applied) per year and keeps records necessary to substantiate annual coating usage. The provisions of the federal NSPS regulation apply to each metal furniture surface coating operation that commenced construction, modification, or reconstruction after November 28, 1980. The surface coating operation may be a prime coat or a top coat operation and includes the coating application stations, flash-off area, and curing oven. There is no further tiering of requirements by the state.

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? No

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. There is no known relation to any aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 7411 mandates the U.S. EPA to promulgate standards of performance for emissions from new sources. The federal NSPS regulation which implements this mandate is found in 40 CFR 60, Subpart EE, as published in the Code of Federal Regulations, Title 40, Parts 53 to 60, July 1, 1992. 42 USC 7411(c)(1) allows the U.S. EPA to delegate authority for implementing and enforcing NSPS to states.

2. State compliance standards. The federal NSPS regulation contains compliance standards for the control of volatile organic compounds (VOC) emissions from all facilities affected by 40 CFR 60, Subpart EE, and provisions for maintaining those standards. The provisions in the state regulation are identical to the federal NSPS which is adopted without change.

3. Minimum or uniform standards contained in the federal mandate. The standard for volatile organic compounds (VOC) emissions appear at 40 CFR 60.312. Performance tests and compliance provisions appear at 40 CFR 60.313. Monitoring or emissions and operations appears at 40 CFR 60.314, and reporting and recordkeeping requirements appear at 40 CFR 60.315.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. There will be no stricter requirements or additional responsibilities or requirements beyond those required by the federal NSPS regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality

401 KAR 63:036. Stage II, gasoline dispensing facilities.

RELATES TO: KRS Chapter 224, 224.01-010, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 USC 7511a(b)(1)(A)

STATUTORY AUTHORITY: KRS 224.10-100, 42 USC 7511a(b)(3), 7521(a)(5), 7624, 7625

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the control of emissions from gasoline dispensing facilities.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 63:001.

(1) "Average monthly throughput" means the total gallons of gasoline dispensed during the months of operation in the previous twelve (12) months, divided by the number of months of operation during those twelve (12) months.

(2) "Boot" or "bellows" means an accordion-like tubular cover used over a gasoline nozzle to capture the gasoline vapors displaced during vehicle refueling.

(3) "Cabinet" has the meaning given it in KRS 224.01-010.

(4) "CARB" means the California Air Resources Board.

(5) "Classification date" means the date on which this administrative regulation becomes applicable in a county or portion of a county.

(6) "Coaxial hose" means a hose that has the configuration of a hose-within-a-hose which provides separate passages for the flow of gasoline and vapor return.

(7) "Compliance test" means a test conducted or witnessed by the cabinet used to determine compliance with the provisions of all applicable administrative regulations prior to issuance of a permit to operate.

(8) "Dry break" means a poppet valve seal to which a vapor return hose can be attached.

(9) "Equivalent authority" means an authority recognized by the cabinet and by the U.S. EPA as having a program for certification of vapor recovery systems equivalent to that of CARB.

(10) "Executive order" means a document provided by CARB or by an equivalent authority which certifies that a vapor recovery system or system components achieve at least a ninety-five (95) percent reduction in the VOC emissions during the fueling of a motor vehicle at a facility, and which identifies the performance standards required for the system or system components.

(11) "Facility" or "gasoline dispensing facility" means a site, except a farm not engaged in the sale of gasoline, where gasoline is transferred from a stationary storage tank to a motor vehicle fuel tank which provides fuel to the engine of that motor vehicle.

(12) "Facility representative" means a person employed at a facility with a Stage II vapor recovery system who has been trained to serve at that facility as prescribed in Section 7 of this administrative regulation.

(13) "Functional test" means a test performed during the operation of the vapor recovery system or any of the system components to determine if a component is functioning correctly.

(14) "Gasoline" means any petroleum distillate or petroleum distillate and alcohol blend having a Reid vapor pressure of four (4.0) pounds per square inch (twenty seven and six-tenths (27.6) kilopascals) or greater which is used as a fuel for internal combustion engines.

(15) "Initial monthly throughput" means:

(a) For a facility which commenced construction before the classification date, the total gallons of gasoline dispensed during the months of operation in the twenty-four (24) months preceding the classification date divided by the number of months of operation during those twenty-four (24) months;

(b) For a facility which commenced construction on or after the classification date, an estimate provided by the owner or operator and approved by the cabinet, of the total gallons of gasoline that will be dispensed during the first twelve (12) months of operation divided by twelve (12).

(16) "Initial test" means a test which is performed following completion of construction or modification to determine the capability of the facility to meet the requirements contained in Section 4 of this administrative regulation.

(17) "Leak" means liquid or vapor loss from the gasoline dispensing system or vapor recovery system as determined by visual inspection or functional testing.

(18) "Modification" or "modify" means the replacement, repair, or upgrade of seventy-five (75) percent or more of the facility's Stage II equipment. Determination of the percentage is based on the cost of a total system replacement at the time of modification.

(19) "Month" means calendar month.

(20) "Month of operation" means a month during which a facility is not closed for the purpose of dispensing gasoline for more than four (4) consecutive days.

(21) "Motor vehicle" means a vehicle, machine, or mechanical contrivance propelled by an internal combustion engine and licensed for operation and operated upon the public highways.

(22) "Nonbiogenic VOCs" means the VOC pollution entering the atmosphere deriving from all sources except for naturally occurring emissions from vegetation.

(23) "Owner or operator" means any person who owns, leases, operates, manages, supervises, or controls (directly or indirectly) a gasoline dispensing facility.

(24) "Person" has the meaning given it in KRS 224.01-010.

(25) "Registration date" means the date the owner or operator applies to the cabinet for the exemption provided in Section 3 of this administrative regulation.

(26) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids, except liquefied petroleum gases, as determined by ASTM Method D323-90, which is incorporated by reference in 401 KAR 50:015.

(27) "Stage II vapor recovery" means gasoline vapor recovery during the refueling of a motor vehicle from a stationary storage tank at a facility.

(28) "Stage II vapor recovery system" means a vapor recovery system certified by CARB or by an equivalent authority to reduce the emissions of VOCs during the fueling of a motor vehicle at a facility by ninety-five (95) percent or more.

(29) "Storage tank" means a tank at a gasoline dispensing facility which is used for the storage of gasoline.

Section 2. Applicability. This administrative regulation shall apply to each gasoline dispensing facility located in a county or a portion of a county that is:

(1) Designated nonattainment for ozone, for any nonattainment classification except marginal, as defined in 401 KAR 51:010; and

(2) In an air quality control region, as designated in 401 KAR 50:020, in which twenty (20) percent or more of the nonbiogenic VOCs produced in the year 1990 in the nonattainment portion of that region emanated from motor vehicles.

Section 3. Exemptions. (1) A facility commencing construction prior to the classification date and having an initial monthly throughput of 10,000 gallons or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet within six (6) months after the classification date;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the classification date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the classification date if the average monthly throughput exceeds 10,000 gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded 10,000 gallons.

(2) A facility commencing construction on or after the classification date and having an initial monthly throughput of 10,000 gallons

or less shall be exempt from this administrative regulation if the owner or operator:

(a) Completes a registration form as provided in 401 KAR 50:030 and submits it to the cabinet before the facility begins dispensing gasoline;

(b) Annually calculates the facility's average monthly throughput on the anniversary of the registration date;

(c) Notifies the cabinet within thirty (30) days of the anniversary of the registration date if the average monthly throughput exceeds 10,000 gallons; and

(d) Maintains for two (2) years records which demonstrate that the facility's average monthly throughput has not exceeded 10,000 gallons.

(3) If the average monthly throughput of an exempted facility exceeds 10,000 gallons, the facility shall cease to be exempted and the owner or operator shall comply with this administrative regulation within one (1) year of the anniversary date on which the calculation was made.

Section 4. Permit Requirements. (1) A person shall not construct or modify a Stage II vapor recovery system unless a permit has been issued by the cabinet pursuant to 401 KAR 50:035.

(2) After the applicable compliance date in Section 5 of this administrative regulation, an owner or operator shall not transfer or allow the transfer of gasoline from a stationary storage tank at a gasoline dispensing facility into a motor vehicle fuel tank unless:

(a) A Stage II vapor recovery system is properly constructed and operated during the transfer;

(b) Coaxial hoses are used at the dispensers;

(c) The Stage II vapor recovery system contains no components that would impede the performance of the functional or compliance tests of the system; and

(d) One (1) of the following conditions is met:

1. An initial test as specified in Section 8(1) of this administrative regulation has been passed and the cabinet has not denied the facility a permit to operate. The authority to operate pursuant to the initial test shall expire sixty (60) days after performance of the initial test, except as provided in Section 8(2)(b) of this administrative regulation.

2. A compliance test as specified in Section 8(2) of this administrative regulation has been passed and a complete application for a permit to operate has been submitted to the cabinet. The application shall be submitted within two (2) weeks of the compliance test date.

Section 5. Compliance Timetable. (1) The owner or operator of a facility to which this administrative regulation applies shall comply with this administrative regulation in the following manner:

(a) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput of 100,000 gallons or more shall comply within one (1) year of the classification date.

(b) Facilities which commenced construction prior to November 15, 1990, with an initial monthly throughput between 10,000 and 100,000 gallons shall comply within two (2) years of the classification date.

(c) Facilities which commenced construction on or after November 15, 1990, and on or before the classification date, shall comply within six (6) months of the classification date.

(d) Facilities commencing construction after the classification date shall comply with this administrative regulation before they commence dispensing gasoline.

(2) A facility shall be considered to have met the compliance timetable if the initial test has been passed and submitted to the cabinet by the date prescribed in subsection (1) of this section. This shall not exempt a facility from the requirements of Section 4(2)(d)2 of this administrative regulation.

Section 6. Operating Requirements. The owner or operator shall maintain the Stage II vapor recovery system in accordance with the manufacturer's specifications and the criteria issued in the executive order of CARB or an equivalent authority approving the system. The owner or operator shall comply with the following:

(1) An owner or operator shall not dispense gasoline, or allow a person to dispense gasoline, using Stage II vapor recovery equipment containing a defect listed in this subsection. If a defect described in this subsection is discovered, the owner or operator shall post an "Out of Order" sign on the equipment and shall ensure that the equipment is rendered inoperable. The defects shall include:

(a) The absence or disconnection of any component that is part of the Stage II vapor recovery system;

(b) The use of equipment not in accord with the system certification;

(c) A vapor hose that is crimped or flattened so that:

1. The vapor passage is completely blocked; or

2. The pressure drop through the vapor hose is greater than two (2) times the certification requirements;

(d) A nozzle boot that is torn in one (1) or more of the following ways:

1. A triangular shaped or similar tear more than one-half (1/2) inch on a side; or

2. A hole more than one-half (1/2) inch in diameter; or

3. A slit more than one (1) inch in length;

(e) A faceplate or flexible cone on the boot of a nozzle that is damaged so that the ability to achieve a seal with a fill pipe interface is impaired for at least one-quarter (1/4) of the total circumference of the faceplate or flexible cone;

(f) A malfunctioning nozzle shutoff mechanism;

(g) Vapor return lines, including components such as swivels, antirecirculation valves, and underground piping, that malfunction or are blocked, or are restricted so that the pressure drop through the line is greater than two (2) times the certification requirement;

(h) An inoperative vapor processing unit;

(i) An inoperative vacuum producing device;

(j) An inoperative pressure/vacuum relief valve, vapor check valve, or dry break;

(k) Leaks; or

(l) An equipment defect or changes to a component of the system which the cabinet determines will substantially impair the control efficiency of the system.

(2) A defect in a component of the Stage II vapor recovery system which is not listed in subsection (1) of this section may remain in operation but shall be repaired or replaced within fifteen (15) days after being identified as defective.

(3) If the cabinet identifies a defect specified in subsection (1) of this section, the cabinet shall affix a tag to the defective equipment stating that the equipment is out of order. The tag shall not be removed until the cabinet has been notified that the defect has been corrected, and the tagged equipment has been authorized for use by the cabinet.

(4) The owner or operator shall ensure that safe access to the system components and monitoring equipment is maintained for inspection and compliance determination by the cabinet.

(5) The owner or operator shall ensure that operating instructions for dispensing fuel are displayed on or near each dispenser, in a print type and size that is easily readable, which include at a minimum:

(a) A clear description of how to use the equipment;

(b) A warning not to attempt continued dispensing of fuel after automatic shutoff; and

(c) A telephone number established by the cabinet to report problems experienced with equipment.

Section 7. Training of Facility Employees. (1) The owner or operator shall ensure that he or at least one (1) person at the facility is trained to operate the vapor recovery system, and that the training includes the following topics:

(a) Purposes and effects of the Stage II vapor recovery program;

(b) Operation and functioning of the vapor recovery system at that facility;

(c) Start-up and shut-down procedures, including daily equipment inspections;

(d) How to repair or replace faulty equipment without voiding the equipment warranties;

(e) Procedures for posting and removing "Out of Service" signs;

(f) The executive orders of CARB or of the equivalent authority certifying the system, the range of components certified for use in the system, and the requirements placed on the owner or operator by CARB or the equivalent authority;

(g) Maintenance schedules and requirements for the system and its components;

(h) Equipment warranties; and

(i) Equipment manufacturer and rebuilder contacts, including names, addresses, and phone numbers, for parts and service.

(2) Training may be provided by the vapor recovery equipment manufacturer or distributor, by the person constructing or modifying the Stage II vapor recovery system, or by training manuals provided by the manufacturer, distributor, or the person constructing or modifying the Stage II vapor recovery system. If training is provided by training manuals, they shall be kept at the facility and made available to the cabinet upon request.

(3) The owner or operator shall ensure that the training includes a practical demonstration wherein the facility representative demonstrates an ability to operate and inspect the equipment and to perform a start-up and shut-down of the facility. This demonstration may be performed at another facility with a similar vapor recovery system. The cabinet may require that this demonstration be performed and witnessed by the cabinet as a condition for compliance.

(4) The owner or operator shall obtain a Facility Representative Training Certificate, DEP-6049, which is incorporated by reference in Section 10 of this administrative regulation, from the cabinet for each trained facility representative in his employ. This form shall be:

(a) Signed by the facility representative, certifying that he has been trained as prescribed in subsection (2) of this section;

(b) Signed by the owner or operator, certifying that he has witnessed a practical demonstration performed by the facility representative as prescribed in subsection (3) of this section; and

(c) Notarized.

(5) The owner or operator shall maintain a recorded history of all trained facility representatives which includes the following:

(a) The name of the facility representative and the date he received the training certificate required in subsection (4) of this section; and

(b) If applicable, the date the facility representative left the employ of the owner or operator.

(6) The owner or operator shall not operate the facility for more than ninety (90) consecutive days without a trained facility representative.

Section 8. Test Methods and Procedures. As provided in Section 4(2)(d) of this administrative regulation and at other times as may be required by the cabinet, the owner or operator shall conduct tests according to this section.

(1) Initial test. Upon completion of the construction or modification of a Stage II vapor recovery system, the owner or operator may conduct an initial test as prescribed in subsection (3) of this section as appropriate for the system. At least two (2) working days before the tests are conducted, the owner or operator shall inform the appropriate regional office of the division of the date the initial test will be conducted.

(2) Compliance test. After the facility has completed construction, the owner or operator shall conduct a compliance test as prescribed in subsection (3) of this section.

(a) After completion of construction the owner or operator shall contact the appropriate regional office to schedule a compliance test. The owner or operator shall deliver a written confirmation of the test date to the regional office at least five (5) working days before the test date. The confirmation letter shall name the person who will conduct the compliance test.

(b) The compliance test shall be conducted no more than sixty (60) days after construction is completed, except that the date for the compliance test may be delayed up to 180 days after construction is completed, if the cabinet deems the time extension necessary to witness the compliance test.

(c) If the facility fails the compliance test, the cabinet shall give the owner or operator thirty (30) days notice to correct the deficits, and a new date for the compliance test shall be set.

(3) Initial or compliance tests shall be conducted in accordance with the following test procedures as found in Appendix J of the EPA document, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II, Appendices," which is incorporated by reference in Section 10 of this administrative regulation, except that the cabinet may approve other test procedures approved by CARB or an equivalent authority and the U.S. EPA:

(a) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure.

(b) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs. Flow/Liquid Blockage Test Procedure. The cabinet may require that this test be conducted simultaneously on all the nozzles of a dispenser from which gasoline can be dispensed simultaneously.

(c) Bay Area Source Test Procedure ST-37, Liquid Removal Devices. This test applies only to systems using liquid removal devices.

Section 9. Recordkeeping Requirements. (1) The owner or operator shall maintain at the facility the following records:

(a) All applicable permits and licenses required to operate the facility;

(b) The executive orders of CARB or the equivalent authority for the Stage II vapor recovery system;

(c) Names, addresses, and phone numbers of persons who construct or modify the Stage II system;

(d) Current Facility Representative Training Certificate; and

(e) Test results which verify that the vapor recovery system meets or exceeds the requirements of the tests noted in Section 8 of this administrative regulation. The test results shall be dated, and the names, work addresses and phone numbers of the persons conducting the tests shall be listed.

(2) The following records shall be maintained at the facility for two (2) years:

(a) Maintenance records including any repaired or replacement parts and description of the problem;

(b) Compliance records including warnings or notices of violation issued by the cabinet, kept in chronological order;

(c) Gasoline throughput records and a record of months of operation which will allow the average monthly gasoline throughput rate to be continuously determined;

(d) Inspection reports issued by the cabinet, kept in chronological order; and

(e) The facility representative record mandated in Section 7(5) of this administrative regulation.

(3) These records shall be kept current and made available to the cabinet upon request.

Section 10. Reference Material. (1) Incorporation by reference. The following documents are incorporated by reference:

(a) U.S. Environmental Protection Agency, Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling

Emissions at Gasoline Dispensing Facilities, Volume II, EPA-450/3-91-022b, November 1991, Appendix J, Stage II Installation Test Methods, pages J.1 through J.5-8; available from the U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

(b) DEP 6049, Facility Representative Training Certificate, November 1992.

(2) Copies of the material incorporated by reference in this administrative regulation shall be available for public review at the following offices of the Division for Air Quality:

(a) The Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304; and

(g) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

Section 11. Penalties. (1) An owner or operator who violates any provision of this administrative regulation shall be subject to the appropriate enforcement action as provided under KRS Chapter 224.

(2) The cabinet may deny, suspend, revoke, or modify a permit to construct or a permit to operate a Stage II vapor recovery system due to repeated malfunctioning of the system or its components, or due to systemic problems in testing the system.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1993

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

PUBLIC HEARING: A public hearing to receive comments on the proposed regulation will be conducted on July 26, 1993, at 10 a.m. (ET) in the Auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Those persons interested in attending this public hearing shall contact, in writing at least five days prior to the hearing, John E. Hornback, Director, Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601. To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 564-3382, ext 346. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: John E. Hornback, Director

(1) Type and number of entities affected: This regulation requires that gasoline dispensing facilities must install Stage II vapor recovery systems as mandated by the 1990 Clean Air Act Amendments (CAAA), if they have an average monthly gasoline throughput of greater than 10,000 gallons, and they are located in Kentucky's moderate ozone nonattainment areas whose motor vehicle VOC emissions are at least 20% of the nonbiogenic VOCs emitted there. The areas which are affected by this regulation are Boone, Campbell, and Kenton counties, and parts of Oldham and Bullitt counties. Facilities in Jefferson County must also install Stage II according to the program implemented by the Jefferson County Air Pollution Control District. The cabinet has tentatively identified the following number of facilities which must install Stage II systems in the above referenced counties:

Boone County - 53
Kenton County - 65
Campbell County - 39
Oldham County - 22
Bullitt County - 28
Total facilities - 207

Facilities with an average monthly throughput of 10,000 gallons or less are exempt from this administrative regulation if they register with the cabinet and maintain appropriate gasoline throughput records.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost for constructing a new facility with Stage II adds about $1,200 to $1,500 per dispenser. (This includes Stage I costs.) The cost is somewhat higher, up to $2,000 per dispenser, for small facilities with vapor processor units. The cost for retrofitting a facility with Stage II varies between $1,800 per dispenser for a large facility and $3,500 per dispenser for a small facility with a vapor processor unit. In California, the Leak Test costs about $200 and the Back Pressure Test between $150 and $250 depending on the size of the facility. In St Louis, the set of compliance tests totals less than $500. If there are no leaks, the Leak Test will shut the facility for less than an hour. If there are leaks, it may take up to a day to find and eliminate the leaks, especially if the underground piping has to be uncovered.

2. Continuing costs or savings: The annual increased costs of maintenance and capital recovery for a balance system or a balanced vacuum system vary from $160 extra per dispenser for a new large facility to $600 per dispenser for a small retrofitted facility. (The increased costs are partially offset by the gasoline vapors which are recovered.) These costs add about three tenths of a cent ($0.003) per gallon in large facilities, and about one and a third cents ($0.013) per gallon in small facilities. For vacuum systems which use processor units to burn part of the recovered vapors, the annual cost varies from $300 extra per dispenser for a new large facility, to $1,000 per dispenser for a small retrofitted facility. The additional costs for these facilities are about three fifths of a cent ($0.006) per gallon in a large facility, and two cents ($0.02) per gallon in a small facility.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): With only the controls required in 401 KAR 59:175 and 401 KAR 61:085 (Stage I) in place, no affected facility has a large enough throughput to produce twenty five (25) tons of VOCs, and thus no emission fee will be charged for these sources under the present Kentucky statutes and regulations. Every fifth year the facility must undergo a compliance test which may cost up to $500.

(b) Reporting and paperwork requirements: The owner or operator of each facility is required to apply for a construction permit to install the Stage II vapor recovery system. A site plan must accompany the application. Each owner or operator is required to keep on-site files concerning maintenance and repair records of the vapor recovery system, inspection reports, compliance records, a list of facility representatives and the current facility representative training certificates, and monthly gasoline throughput records. Every five (5) years, or whenever a modification of the facility occurs, the owner or operator must apply for a new operating permit. The owner or operator of an exempted facility is required to apply for an exemption and is required to maintain an on-site file of the facility's monthly gasoline throughput during the previous two (2) years.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: An additional inspector will be needed for the Florence Regional Office. Additional training is also needed for existing inspectors and permitting engineers. Funds will be used to set up a computer database; to cover development of training materials, public information materials, and guidance for owners and operators, and division personnel; and to cover increased staff time

devoted to maintaining records, conducting inspections, and responding to the public.

2. Continuing costs or savings: During the second year of implementation, another inspector will be needed. Funds will be used during the second and third years to continue implementing the Stage II program. Once the inspection and permitting demands have become stable, funds will be used to maintain the program.

3. Additional factors increasing or decreasing costs: The costs for developing and implementing the Stage II program were anticipated during the last budget cycle and were approved by the 1992 General Assembly.

(b) Reporting and paperwork requirements: Stage I permits will be combined with Stage II permit documents. For Boone, Kenton, and Campbell counties, this will increase the size of the documents and the database. For Boyd, Greenup, Bullitt, and Oldham counties, new permits will be needed for all affected facilities, and a new data-base will be installed.

(3) Assessment of anticipated effect on state and local revenues: Costs of Stage II monitoring and enforcement will be covered by the general budget. After installation of controls, none of the affected gasoline dispensing facilities will pump enough gasoline to exceed the emissions fee-threshold amount of 25 tons annually. Therefore, these facilities will not be required to pay emission fees under present state statutes and regulations.

(4) Assessment of alternative methods; reason why alternatives were rejected: An exemption of independent small business marketers of gasoline (ISBMs) for facilities that have a gasoline throughput of 50,000 gallons per month or less is allowed by the CAAA. However, the CAAA also require that moderate ozone nonattainment areas reduce their VOC emissions by 15% by November 15, 1996. If only a smaller reduction is possible, the CAAA require the implementation of all measures that feasibly could be implemented in the area; otherwise, the area will be degraded to a serious ozone nonattainment status. Cabinet projections show that Kentucky is unlikely to obtain the required 15% reductions; therefore, no exemption has been allowed for ISBMs.

(5) Identify any statute, rule, regulation or government policy which may be in conflict, overlapping, or duplication: There is no overlapping or duplication.

(a) Necessity of proposed regulation if in conflict: There is no conflict with other regulations.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: There is no conflict with other regulations.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. This regulation does not apply to a facility with an average monthly gasoline throughput of 10,000 gallons or less, if the owner or operator applies for and receives an exemption. As mandated in the CAAA, existing facilities can continue dispensing gasoline without installing Stage II recovery systems until the appropriate compliance date. Newly constructed facilities dispensing more than 10,000 gallons of gasoline per month must install Stage II systems from the beginning of their operation.

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 a gasoline dispensing facility owned by a local government agency if it has an average monthly throughput of 10,000 gallons or more.

3. State the aspect or service of local government to which this administrative regulation relates. The CAAA requires that every gasoline dispensing facility with a throughput of over 10,000 gallons of gasoline per month install a Stage II system. Thus, a facility owned by a local government which dispenses 10,000 gallons of gasoline or less per month must apply for an exemption, and a facility which dispenses more than 10,000 gallons of gasoline per month must install a Stage II vapor recovery system.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no anticipated effect on the revenues of local governments.

Expenditures (+/-): If a local government becomes subject to this administrative regulation, then the local government would have the same expenses as a privately owned facility.

Other Explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is contained in the Clean Air Act as amended by the 1990 Clean Air Act Amendments (42 USC 7401 et seq.).

2. State compliance standards. KRS 224.10-100 requires the Cabinet for Natural Resources and Environmental Protection to provide an air quality program for Kentucky.

3. Minimum or uniform standards contained in the federal mandate. 42 USC 7511a(b)(3) mandates that each state submit a revision to the State Implementation Plan (SIP) by November 15, 1992, to require that gasoline dispensing facilities with a throughput of over 10,000 gallons per month in moderate ozone nonattainment areas install Stage II recovery systems after the effective date of the state regulation according to the following compliance schedule: (a) facilities constructed or modified since November 15, 1990, within six (6) months; (b) facilities with a throughput of at least 100,000 gallons per month, within one (1) year; and (c) all other facilities, within two (2) years following the effective date. 42 USC 7511a(b)(1)(A)(i) mandates that the state submit by November 15, 1993, a SIP revision to reduce by November 15, 1996, the VOCs in moderate ozone nonattainment areas by 15% from the 1990 baseline. The reductions due to the installation of Stage II will be included in the 15% reduction. The "Technical Guidance - Stage II Vapor Recovery Systems" (U.S. EPA, November 1991) "(Stage II)", Chapter 6; "Enforcement Guidance for Stage II Vehicle Refueling Control Programs" (U.S. EPA, December 1991), and the U.S. EPA Model Rule, dated August 17, 1992, set requirements for:

(a) Training of a facility representative for each facility.

(b) Data collection and maintenance at the regulated facilities and at the permitting authority.

(c) An initial compliance test, repeated every five (5) years.

(d) An annual inspection for each facility.

(e) An enforcement policy.

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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities. There are no stricter standards, or additional or different responsibilities.

TRANSPORTATION CABINET

600 KAR 1:100. Professional engineering and related services procurement.

RELATES TO: KRS 45A.800 through 45A.835, 23 USC, 23 CFR 172, 48 CFR 1, 49 CFR 18

STATUTORY AUTHORITY: KRS 45A.800 through 45A.835, 23 USC, 23 CFR 172, 48 CFR 1, 49 CFR 18

NECESSITY AND FUNCTION: This administrative regulation adopts the procedures to be followed by the Transportation Cabinet when contracting for professional engineering or related services. It has a special emphasis on the procurement of engineering services since KRS Chapter 45A requires the Transportation Cabinet to follow a specific procurement procedure when securing engineering services. For consistency the Transportation Cabinet is also applying those procedures to the procurement of engineering related services.

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" means as defined in KRS 45A.030(2).

(4) "Competitive negotiation" means as described in KRS 45A.085.

(5) "Contract" means as defined in KRS 45A.030(5).

(6) "Contract modification" means as defined in KRS 45A.030(6).

(7) "Cost per unit of work" means a price based on units when the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(8) "Cost plus a fixed fee" means a price based on the actual allowable cost of the work plus any preestablished fixed amount for profit.

(9) "Direct salary" means the salary of persons directly involved with and chargeable to a specific project, e.g., engineering or draftsman time spent on a project.

(10) "Firm" means a company or individual providing professional engineering or related services to the cabinet in accordance with KRS Chapter 45A.

(11) "Lump sum" means a fixed price, including cost and profit, agreed upon between the professional and cabinet for a group of tasks without breakdown of individual values, i.e., a lot price.

(12) "Modification" means a formal revision to the terms of a contract.

(13) "Noncompetitive negotiation" means as described in KRS 45A.095.

(14) "Overhead costs" means the indirect costs, including salaries and other costs, not chargeable to any specific project. These costs normally support the different projects in which a firm is involved, e.g., accounting, general maintenance and repair, building rent, utilities, furniture, etc.

(15) "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others.

(16) "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability, reputation, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.

(17) "Prequalification category" means a type of project for which professional engineering or related services are contracted.

(18) "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(19) "Professional engineering or related services" means specialized engineering or related professional services performed by individuals or firms of recognized technical competence, education or experience that are involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.

(20) "Professional services" means specialized services performed by individuals or firms of recognized technical competence.

(21) "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(22) "Project supervisor" means the director of the user division or person designated by the user division director to oversee the performance of a firm to perform contracted services on a project.

(23) "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(24) "Salary additives" means employer paid fringe benefits including employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state and other similar benefits.

(25) "Scope of work" means all services and actions required of the firm by the contract.

(26) "Services" means as defined in KRS 45A.030(19).

(27) "Subcontractor" means an individual or firm contracted to another firm for the performance of the work contracted to the other firm by the cabinet.

(28) "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the firm's claims.

(29) "User division" means as defined in KRS 45A.800(6).

(30) "Work unit" means an item on a list of tasks which are required to be accomplished by the firm in order to satisfactorily complete the scope of work.

Section 2. Transportation Cabinet Employee Ethics and Responsibilities. All cabinet personnel engaged in the procurement of engineering or related services shall comply with the following:

(1) Consider the interests of the Commonwealth of Kentucky and the cabinet first when contracting for professional services;

(2) Request and accept assistance from other cabinet and state personnel as required without allowing it to impair the dignity and responsibility of the employee's position;

(3) Seek to obtain the maximum value for each dollar spent for professional services;

(4) Strive for honesty and truth in contracting;

(5) Denounce all forms of bribery or favors;

(6) Invite all firms to submit their qualifications for consideration by the cabinet;

(7) Assist other cabinet personnel in the contracting for professional services as necessary; and

(8) Comply with both the letter and the spirit of the Executive Branch Code of Ethics pertaining to standards of ethical conduct in the Executive Branch, Conflicts of Interest of Public Officers and Employees, KRS 45A.340, and to the cabinet's Official Order regarding Conflict of Interest.

Section 3. Federal Regulatory Requirements. (1) If a highway project is funded in part by federal-aid funds, the cabinet shall be regulated by Title 23 of the United States Code and by the Code of Federal Regulations 23 CFR 172 and 49 CFR 18.

(2) The cabinet shall submit justification and receive approval from the FHWA before using the noncompetitive negotiated method of contracting when federal-aid highway funds are used in the contract. A contract when federal-aid highway funds may be awarded by noncompetitive negotiation shall be limited to the following:

(a) The service is available only from a single source;

(b) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(c) After solicitation of a number of sources, competition is determined to be inadequate.

Section 4. Prequalification for Professional Engineering or Related Services. (1) To be considered for a contract to provide engineering

related services with the cabinet, a firm shall meet the cabinet's prequalification requirements in the same manner as a firm providing engineering services pursuant to KRS 45A.825.

(2) The cabinet shall establish a consultant prequalification committee to evaluate the statements of qualifications of firms offering professional engineering or related services.

(3) The members of the consultant prequalification committee shall be the following:

(a) Director, Division of Specialized Programs, Chairperson;
(b) Assistant State Highway Engineer for Preconstruction;
(c) Assistant State Highway Engineer for Construction;
(d) Director, Division of Design;
(e) Director, Division of Bridges;
(f) Director, Division of Materials;
(g) Director, Division of Planning;
(h) Director, Division of Environmental Analysis; and
(i) Associate Assistant State Highway Engineer for Operations.

(4) Members may be added to or deleted from the consultant prequalification committee by three-quarters (3/4) positive vote of the committee.

(5) The consultant prequalification committee shall consider the statement for prequalification of each firm which wishes to be considered for consultant contracts by the cabinet.

(6) The consultant prequalification committee shall maintain a current list of prequalified consulting professional engineering and related service firms.

(7) A firm desiring consideration for prequalification shall complete each qualification questionnaire pertaining to the categories for which prequalification is desired. These forms include the following which are incorporated by reference as a part of this administrative regulation:

(a) Consulting Engineer and Related Services Prequalification Application, TC 40-1, effective May, 1992;

(b) Prequalification Requirements for Geotechnical Drilling Services, TC 64-540, effective May, 1992;

(c) Prequalification Requirements for Geotechnical Engineering Services, TC 64-541, effective May, 1992; and

(d) Prequalification Requirements for Geotechnical Laboratory Services, TC 64-542, effective May, 1992.

(8) The completed prequalification form shall be submitted to the Division of Specialized Programs, 7th Floor, State Office Building, 501 High Street, Frankfort, KY 40622.

(9) Each firm's qualifications for a requested prequalification category shall be reviewed by the offices or divisions within the cabinet with expertise in that requested prequalification category. The recommendations of the offices or divisions shall be reviewed by the consultant prequalification committee.

(10) The criteria for prequalification to be used by the consultant prequalification committee are listed in the appendix to the Consulting Engineer and Related Services Prequalification Application as adopted November 4, 1992 which is incorporated by reference as a part of this administrative regulation.

(11)(a) The committee chairperson shall notify each firm of all actions involving that firm.

(b) If a firm is disapproved for any requested prequalification category or service, the firm shall also be notified of the appeals procedure set forth in Section 5 of this administrative regulation.

(12)(a) A prequalified firm shall annually submit qualification and performance data on or prior to their anniversary dates of prequalification.

(b) The annual application shall include eleven (11) completed sets of the appropriate qualification forms and eleven (11) copies of the firm's current marketing brochure.

(c) Failure to submit the completed forms in a timely manner shall cause the removal of the firm's prequalification status.

(13) A prequalified firm shall notify the Division of Specialized Programs of any major changes either increasing or decreasing the firm's professional or financial qualifications, capabilities, personnel, or other of the major qualification criteria.

(14) The consultant prequalification committee shall review the updated information received from the firm and shall reclassify the firm as appropriate with respect to types of work and capacity of the firm.

Section 5. Appeal Procedure for Firms Not Qualified. (1) A firm may appeal any disapproval relating to its request for approval of a prequalification category pursuant to Section 4 of this administrative regulation.

(2) An appeal shall be made in writing to the chairman of the consultant prequalification committee within thirty (30) days of notification of the action of the committee.

(3) The basis of the appeal and the relief sought shall be stated in the written communication to the chairman.

(4)(a) Within sixty (60) days from receipt of an appeal, the committee shall review the appeal and shall make its decision regarding the appeal.

(b) If the firm agrees, the committee may delay its decision for an additional sixty (60) days while the committee meets with the firm to discuss the appeal.

(5) The committee shall notify the State Highway Engineer and the firm of its decision.

(6) If the firm's appeal is denied by the committee, the firm may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial.

(7) The State Highway Engineer shall notify the firm of his decision within thirty (30) days. The decision of the State Highway Engineer shall be final.

Section 6. Conditional Prequalification. (1) The consultant prequalification committee may grant conditional prequalification to a firm if the firm:

(a) Has no direct highway or transportation experience but has identified personnel which have technical training or education and other types of experience which may allow the firm to perform the required services; or

(b) Performed poorly on past projects for the cabinet or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems.

(2) After the firm has performed services for the cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the committee in accordance with Section 4 of this administrative regulation.

(3) Denial of conditional prequalification of a firm to perform services for the cabinet shall not be appealed.

Section 7. Procurement Bulletin and Advertisement for Selection of Professional Firms for Engineering of Related Services. (1)(a) The Transportation Cabinet Secretary shall approve the evaluation factors and relative weighting placed on each of the factors that appear in a procurement bulletin for selection of professional firms for engineering or related services. Unless the procurement bulletin contains a different set approved by the secretary of the cabinet, the evaluation factors shall be:

1. Relative experience of professional personnel assigned to project team:

a. With transportation projects for the Kentucky Transportation Cabinet; or

b. With transportation projects for federal, local or other state governmental agencies;

2. Capacity to comply with project schedule;

3. Past record of performance on project of similar type and complexity; and

4. Project approach and proposed procedures to accomplish the services for the project.

(b) All four (4) factors shall be weighted equally unless published otherwise in the announcement for the specific project.

(2)(a) A procurement bulletin prepared by the cabinet shall include the following:

1. A request for proposal for each project anticipated to be contracted during a specified period of time which includes the following:

a. The general scope of the project;

b. A request for expression of general interest;

c. A request for a statement of technical qualification; and

d. Any requirements for Disadvantaged Business Enterprise (DBE) utilization;

2. A list of the firms prequalified in each category as of the date of the bulletin;

3. A list of the firms prequalified in each category and certified as a disadvantaged business enterprise in accordance with 600 KAR 3:010 as of the date of the bulletin.

(b) A copy of the procurement bulletin shall be mailed to each firm prequalified in any category to perform engineering or related services for the cabinet.

(c) If deemed appropriate by the State Highway Engineer, the procurement bulletin may indicate the maximum fee for a particular proposed project or require the initial solicitation of a complete work price and qualification proposal.

(d) A procurement bulletin for statewide engineering or related services may specify that more than one (1) firm may be selected to provide the services requested in the bulletin.

(3) Each time a procurement bulletin is published, the cabinet shall place an advertisement of the cabinet's need for engineering or related services and availability of the procurement bulletin in at least two (2) newspapers of general, multicounty circulation and one (1) newspaper which has minorities as its targeted readership.

(4)(a) A prequalified firm responding to a procurement bulletin for engineering or related services shall submit to the Division of Specialized Programs the following:

1. The specified number of copies of a completed Response to Announcement for Engineering or Related Services, form TC 40-15 revised June, 1993. Form TC 40-15 is incorporated by reference as a part of this administrative regulation;

2. A letter of transmittal which summarizes the scope of services;

3. Item numbers placed on all correspondence and any forms;

(b) A prequalified firm responding to a procurement bulletin for construction-related engineering services shall submit to the Division of Specialized Programs in addition to the items in subsection (4)(a) of this section the Supplemental Information in Response to Announcement for Construction Services, form TC 40-7 revised June, 1992. Form TC 40-7 is incorporated by reference as a part of this administrative regulation.

(c) A prequalified firm which proposes to employ a subcontractor when responding to a procurement bulletin shall submit to the Division of Specialized Programs in addition to the other items required by this subsection the Subconsultant Qualifications for Response to Advertisement for Engineering and Related Services, form TC 40-15-SUB revised June, 1993. Form TC 40-15-SUB is incorporated by reference as a part of this administrative regulation.

(d) A firm not responding with the correct number of copies or providing incomplete information on the forms shall not be considered for selection.

(5) In addition to complying with subsection (3) of this section, a firm which has not been prequalified shall submit the number of copies specified in the procurement bulletin of the forms required for prequalification in Section 4 of this administrative regulation and a like number of the firm's marketing brochures.

(6)(a) The Director, Division of Specialized Programs, shall certify the list of firms that responded to the procurement bulletin in a timely manner to the appropriate professional engineering services selection committee.

(b) Responses received after the deadline shall be returned to the firm and shall not be listed for consideration to perform the project.

(c) The list of responses to the procurement bulletin shall be confidential until the contract is negotiated and executed and the selected firm receives a notice of approval for payment from the Division of Specialized Programs as set forth in Section 16 of this administrative regulation.

Section 8. Establishing a Professional Engineering Services Selection Committee. (1) A professional engineering services selection committee shall be selected as set forth in KRS 45A.810(5) and (6).

(2)(a) The State Highway Engineer shall annually request voluntary applications from the professional engineering staff in the cabinet for availability to serve in the pool of six (6) professional engineers required by KRS 45A.810(5)(a).

(b) The State Highway Engineer, or his designee, shall review all applications and submit a list of ten (10) applications from which the secretary shall select six (6) to serve in the pool for a period of one (1) year.

(c) Only persons who are merit employees of the cabinet and registered professional engineers of the Commonwealth shall be appointed to the pool.

(d) A person serving on the professional engineering services selection committee from this pool shall not be eligible to also serve on the same selection committee as a representative of a user division as specified KRS 45A.810(5)(b).

(3)(a) The director of the user division that shall be responsible for monitoring the professional services shall appoint two (2) professional engineers from either the user division or the same functional area from the highway district offices where the project is located.

(b) If the user division does not have two (2) professional engineering merit employees or if the services in the announcement are for nonengineering but related services, the director shall appoint two (2) merit employees who have familiarity and experience related to the services that are being contracted.

(c) If the director is a merit employee, the director may appoint himself to the committee.

(d) If there are two (2) user divisions with approximately equal or separate responsibilities for the project, upon approval of the Director of the Division of Specialized Programs, each co-user division shall appoint one (1) member to the selection committee.

(4) An employee of the cabinet shall not be required to involuntarily serve as a member of a professional engineering services selection committee.

(5) Each member of a professional engineering services selection committee shall execute a Certificate of Understanding of Restrictions for Members of Professional Engineering Services Selection Committee, form TC 40-9 effective July, 1992. This form is incorporated by reference as a part of this administrative regulation.

(6)(a) If the individual, randomly selected to serve on a selection committee in accordance with KRS 45A.810(5)(c) is an employee of a consulting firm, that consulting firm shall not be considered for any projects which are reviewed by that selection committee.

(b) If a firm submitted a response under this circumstance, the firm's response for that project shall be returned by the selection committee with a letter of explanation.

(7) Upon receipt of written approval from the secretary of the cabinet to contract for a firm to perform professional engineering or related services, the State Highway Engineer, or his designee, shall establish a professional engineering services selection committee for each project to be advertised.

(8) The Division of Specialized Programs shall provide each professional engineering services selection committee with the necessary administrative and technical support and office supplies.

(9)(a) Each member of a professional engineering services selection committees shall comply with the Executive Branch Code of

Ethics established in KRS Chapter 11A.

(b) Each member of a selection committee shall scrupulously comply with both the letter and the spirit of the cabinet's Official Order Number 94057 regarding Conflict of Interest which was issued on March 9, 1992. This official order is incorporated by reference as a part of this administrative regulation.

Section 9. Operation of a Professional Engineering Services Selection Committee. (1)(a) The initial meeting of a professional engineering services selection committee shall be called by the Division of Specialized Programs.

(b) At the initial meeting the selection committee shall elect a chairperson and vice-chairperson who shall hold their positions for the duration of the selection committee's participation in a project.

(2)(a) Meetings of a professional engineering services selection committee may be called by the chairperson at a mutually convenient time during normal working hours with at least one (1) week's notice.

(b) Special meetings may also be called upon consensus of four (4) of the voting members of the selection committee.

(c) A motion or decision of the selection committee shall require a simply majority affirmative of all voting members present for passage.

(d) A quorum shall be constituted by four (4) of the five (5) voting members present.

(e) Voting by proxy shall not be allowed.

(3)(a) The professional engineering services selection committee shall give fair and impartial consideration to all responses certified in accordance with KRS 45A.825(6).

(b) The selection committee shall utilize the evaluation factors and weights indicated in the announcement for each project to screen all certified firm responses.

(c) Prior to the meeting of the selection committee to determine and rank the three (3) most qualified firms, each voting selection committee member shall review all certified responses and preliminarily evaluate and numerically rate each firm using the weighted evaluation factors that appeared in the procurement bulletin.

(4) At the meeting of the selection committee, each member's ratings shall be used to select the most qualified firms according to that member's ratings.

(5) The entire selection committee shall discuss all of the firms which have been rated by any member as one (1) of the three (3) most qualified of the firms certified to the selection committee for evaluation.

(6) Based on a consensus of the selection committee any of the firms discussed in subsection (4) of this section may be eliminated from further consideration for this project.

(7)(a) Each member of the selection committee shall individually evaluate and rate and by secret ballot rank each of the firms remaining for consideration based on the published evaluation factors and weights.

(b)1. Based on all ratings performed in subsection (7)(a) of this section, the three (3) most qualified firms shall be established by the selection committee.

2. In case of a tie rating for one (1) of the three (3) most qualified positions the selection committee shall rediscuss then reevaluate the firms which had the tied ratings until the tie is broken.

(8) The selection committee shall rediscuss the three (3) firms established as the most qualified.

(9)(a) The selection committee shall by secret ballot rank the three (3) firms.

(b) In case of a tie for one (1) of the three (3) rankings, the selection committee shall rediscuss and revote between the tied firms.

(10) If the selection committee elects, it may interview any of the responding firms to aid in its determination of the best qualified firm.

(11) For selection committee reviews involving statewide services advertised in accordance with Section 7(2)(d) of this administrative regulation, the committee shall rank the same number of firms as specified in the procurement bulletin, but at least three (3) firms.

(12) Prior to submission of the contract to the LRC Personal Services Contract Review Subcommittee, each selection committee member shall sign a form certifying that rankings and ratings were made considering the evaluation factors published in the procurement bulletin.

(13) The evaluations and ratings of the individual selection committee members shall be considered preliminary and confidential working documents and shall not be available to the public.

(14)(a) The chairman of the professional engineering services selection committee shall notify the Director of the Division of Specialized Programs of the firms determined by the committee to be the three (3) best qualified and the order of their ranking.

(b) The Division of Specialized Programs shall send the letters required in KRS 45A.825(7)(c).

(c) The Division of Specialized Programs shall immediately notify by letter the top-ranked firm of its selection for the advertised project.

Section 10. Prenegotiation Procedures. (1) The selected firm shall meet with cabinet representatives to discuss in detail the scope of services to be provided by the firm for the project.

(2) After this meeting, the firm shall submit the following to the cabinet:

(a) For roadway design, work units which qualifies the tasks to be performed to achieve the roadway design services that appeared in the advertisement or procurement bulletin.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(b) For structure work, work units include a description of the structure to be designed including but not limited to type, length, span arrangement, curves, skew, pilings based on preliminary geotechnical information and any other pertinent considerations.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(c) For environmental assessments, a copy of the work units and corresponding manhours to achieve each task including all subconsultants.

(d) For geotechnical assessments a copy of the work units which qualifies the tasks to be performed to achieve the geotechnical services that appear in the announcement.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(e) For bridge maintenance inspection a copy of work units and proposed equipment usage to achieve the inspection services that appeared in the announcement.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work

units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(f) For planning studies, work units which qualifies the tasks to be performed to achieve the planning study services that appeared in the announcement.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the firm; or

c. Reject and ask the firm to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the firm, each shall independently develop labor rates to be applied to the work units to determine manhours for each task.

(3) The firm shall submit to the Division of Specialized Programs a fair and reasonable fee proposal which shall be prepared using the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subcontractors and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of Section 11(3)(c) and (d) of this administrative regulation; and

(f) Manhours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(3) After the Division of Specialized Programs requests a proposal and fee estimate from the firm, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Specialized Programs in negotiation of the contract.

Section 11. Financial Records of Professional Firms. (1) A professional firm which has been prequalified shall allow the cabinet access to all financial information necessary to determine the firm's direct wage rates, indirect cost rates, overhead and direct project charges which are not included in overhead rates.

(2) These firms shall maintain all financial records including payroll time records for all employees including the firm's principals in accordance with 48 CFR 1 Part 31.

(3)(a) The maximum salary for a principal or partner of a professional firm shall be $75,000 per year (thirty-six (36) dollars and six (6) cents per hour);

(b) The maximum allowable overhead rate shall be 150 percent;

(c) Travel expenses for firm employees or survey crews shall be limited to those incurred from an office in Kentucky or an office within fifty (50) air miles of Kentucky;

(d) Direct expenses not included in overhead shall have the following limits:

1. Passenger car - twenty-five (25) cents per mile;

2. Truck or four (4) - wheel drive vehicle - thirty-five (35) cents per mile;

3. Lodging:

a. Professional staff - fifty-five (55) dollars per night per person; and

b. Survey field personnel - seventy (70) dollars per night for two (2) persons;

4. Meals:

a. Breakfast - five (5) dollars per day per person;

b. Lunch - five (5) dollars per day per person; or

c. Dinner - ten (10) dollars per day per person.

5. Personal computer time - fifteen (15) dollars per hour;

6. Photocopying - ten (10) cents per page;

7. Blueprints - one (1) dollar per sheet;

8. Mylar - four (4) dollars per sheet;

9. Printing of reports - estimated cost from the printer; and

10. Travel time for survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives.

(4) This information shall be reviewed annually or at the discretion of the cabinet.

(5) If the cabinet has not audited the firm in the previous twelve (12) months, the last available audit may be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(6) If the firm has a current audit of sufficient detail from a federal, state or local governmental agency, the negotiation unit may use the overhead rates, wage rates and direct project expenses from that audit in negotiating a fee with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(7) Quarterly, the Division of Specialized Programs shall select a minimum of three (3) lump sum contracts that have been completed during the previous three (3) months and shall request an audit from the Department of Fiscal Management.

Section 12. Methods of Contracting with Professional Firms. (1) The following methods of contracting with professional firms shall be acceptable:

(a) Lump sum;

(b) Cost plus a fixed fee;

(c) Specific rates of compensation; or

(d) Cost per unit of work.

(2)(a) When the cabinet chooses the lump sum method of contracting, the firm shall present a statement to the Division of Specialized Programs showing the probable cost for the elements of work and the expected profit.

(b) This statement shall include a supported breakdown of the direct and indirect costs and subcontractor costs which the firm expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can be easily reviewed.

(d) The Division of Specialized Programs and the user division shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the professional firm;

2. The extent, scope, complexity, character and duration of the required services;

3. Professional and financial investments to be required of the firm;

4. The firm's normally expected return for such services;

5. Conditions under which the professional firm is expected to perform;

6. The cabinet's estimate of the appropriate amount for the services required; and

7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) When the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which cannot be exceeded without obtaining cabinet

approval.

(b) During negotiations, the Division of Specialized Programs or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the professional firm for the services required.

(c) The Division of Specialized Programs or other negotiation unit shall establish the fixed fee and upper limit based on past experience gained from negotiations of similar projects, judgment regarding scheduling and complexity of work and the user division's estimates.

(4)(a) When the cabinet chooses the specific rate of compensation method of contracting, the Division of Specialized Programs or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit when the firm establishes, and the user division agrees, that there has been or is to be a significant change in the:

1. Scope, complexity or character of the services to be performed;

2. Conditions under which the work is required to be performed; or

3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

(c) In the case of statewide agreements under which there is to be subsequent individual authorizations, the establishment of a maximum amount shall not be required. A maximum amount, however, shall be established for each of the individual authorizations.

(5)(a) When the cabinet is using the cost per unit of work method of compensation, the professional firm shall be paid on the basis of units completed.

(b) This method of contracting is appropriate when the extent of the work cannot be definitely defined but when cost of the work per unit may be determined in advance with reasonable accuracy.

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for professional firms.

(6)(a) For an individual acting as a professional firm, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 13. Contract Negotiations. (1)(a) The Division of Specialized Programs shall be the designated negotiating agent for the Department of Highways in the cabinet.

(b) If professional engineering or related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division shall be responsible for negotiating the fee.

(2)(a) The Division of Specialized Programs or other designated negotiation unit shall receive the proposal and fee estimate from the professional firm. The proposal submitted by the firm shall include a breakdown of the estimated fee for performing the work including the following:

1. Direct salaries;
2. Overhead;
3. Payroll additives;
4. Other direct costs including cost of materials which are not included in the overhead;
5. Subcontractor costs;
6. Profit; and
7. Use of DBE firms.

(b) The Division of Specialized Programs or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with Section 14 of this administrative regulation.

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the professional firm shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the Department of Fiscal Management.

(4)(a) If a firm intends to utilize the services of a subcontractor to perform any part of the work, at the time of negotiations the firm shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subcontractor.

(c) A subcontractor shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Specialized Programs or other negotiation unit shall be necessary.

(e) If a firm desires to utilize a subcontract to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section 18 of this administrative regulation shall be followed.

(5) A firm which is awarded a contract for professional engineering or related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Specialized Programs.

(6)(a) The profit allowed a professional engineering or related services firm shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. Lump sum contract:

a. Fifteen (15) percent of the total direct labor cost plus overhead costs plus all direct expenses not included in the overhead for a contract, including all contract modifications, less than $2,000,000; or

b. Ten (10) percent of the total direct labor cost plus overhead costs plus all direct expenses not included in the overhead for a contract, including all contract modifications, equal to or in excess of $2,000,000; or

2. Unit price contract - fifteen (15) percent of the estimated unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Specialized Programs or other negotiation unit shall compare the firm's established fee with the cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Specialized Programs or other negotiation unit shall negotiate with the professional firm to establish a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

(9)(a) The firm shall keep written documentation of each negotiations meeting and shall submit to the Division of Specialized Programs or other negotiation unit the following:

1. Minutes of negotiations;
2. As-negotiated fee;
3. As-negotiated manhours;
4. Classification percentage distribution; and
5. Direct cost breakdowns.

(b) The Division of Specialized Programs or other negotiation unit shall prepare negotiation minutes and keep a record of the contract negotiation minutes in the contract file.

(c) The public shall not be denied access to this document.

(10) After the Division of Specialized Programs or other negotiation unit has negotiated a contract, the head of the unit shall send letters to the two (2) other finalists informing them of the firm which

successfully negotiated a contract and the procedure that shall be followed in awarding the contract.

Section 14. Unsuccessful Negotiations. (1) If the Division of Specialized Programs or other negotiation unit is unable to negotiate a satisfactory contract with the professional engineering services selection committee's top-ranked firm at a fee that the negotiator considers to be fair and reasonable to the Commonwealth, negotiations with that firm shall be formally terminated by the negotiator.

(2) The firm and the chairman of the professional engineering service selection committee shall be notified by the negotiation unit, in writing, that negotiations have been terminated.

(3)(a) The Division of Specialized Programs or other negotiation unit shall then request a proposal and fee estimate from the firm ranked second-best qualified by the professional engineering services selection committee and shall proceed to negotiate.

(b) If negotiation with the second-ranked firm is unsuccessful, the firm and the chairman of the selection committee shall be notified in writing by the Division of Specialized Programs or other negotiation unit that negotiations have been terminated.

(4)(a) The Division of Specialized Programs or other negotiation unit shall then request a proposal and fee estimate from the firm ranked third-best qualified by the professional engineering services selection committee and shall proceed to negotiate.

(b) If negotiations are unsuccessful, the firm shall be notified in writing by the Division of Specialized Programs or other negotiation unit that the negotiations have been terminated.

(5)(a) The head of the Division of Specialized Programs or other negotiation unit shall notify the chairman of the professional engineering services selection committee that a satisfactory contract could not be negotiated with any of the three (3) selected firms.

(b) The committee shall then select three (3) additional firms from the respondents to the original procurement bulletin and rank them in order of their competence and qualifications. The negotiation unit shall initiate negotiations with the highest rated firm.

(c)1. Efforts shall continue until either a satisfactory agreement is reached with a qualified firm or the list of firms that responded to the announcement deemed by the committee to be qualified to perform the services has been exhausted.

2. In this case, the user division shall review the project scope and submit a recommendation to the State Highway Engineer as to whether to readvertise the project.

Section 15. Contract Preparation and Execution. (1) The Division of Specialized Programs or other negotiation unit shall prepare an agreement or contract to cover the services to be provided, method and amount of payment, the time of completion and necessary special provisions. The agreement shall also include the General Provisions Attachment as revised June, 1993. The General Provisions Attachment is incorporated by reference as a part of this administrative regulation.

(2) The contract and negotiation minutes shall be sent to the firm for the signature of an authorized representative. All original documents shall be returned to the Division of Specialized Programs or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) When the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Specialized Programs shall send to the FHWA the following requesting their approval:

(a) A copy of the contract;

(b) The negotiated fee;

(c) The firm's fee proposal;

(d) The cabinet's estimate;

(e) The minutes of the negotiation;

(f) The minutes of the predesign conference;

(g) A copy of the advertisement and announcement;

(h) The list of firms that responded to the announcement in a timely manner;

(i) The written approval from the secretary of the cabinet to engage a professional firm;

(j) The minutes of the professional engineering services selection committee; and

(k) The memorandum from the chairman of the selection committee stating the ranking of the three (3) best-qualified firms by the professional engineering services selection committee.

(6) If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate the project or ask for reconsideration by the FHWA.

Section 16. Notice to Proceed and Payments. (1) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(2) When the Division of Specialized Programs or other negotiation unit receives a copy of the transmittal sheet indicating that the LRC Personal Service Contract Review Subcommittee has received the contract and project information for review, a notice to proceed shall be sent to the firm indicating that it may commence work but it shall not bill for services until specifically authorized to do so.

(3) When the LRC Personal Service Contract Review Subcommittee issues a notification of acceptance on a contract, the Division of Specialized Programs or other negotiation unit shall issue a letter to the firm informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Personal Service Contract Review Subcommittee objects to the contract and the cabinet determines that the contract is to be cancelled, the Division of Specialized Programs or other negotiation unit shall notify the firm of the cancellation and shall take necessary steps to close the contract.

(b) If the cabinet determines that the contract is to be modified to comply with the concerns of the LRC Personal Service Contract Review Subcommittee, the Division of Specialized Programs or other negotiation unit shall notify the firm of the necessary modifications and shall follow the contract modification and change order procedures specified in Section 17 of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed as submitted to the LRC Personal Service Contract Review Subcommittee, the Division of Specialized Programs or other negotiation unit shall issue a letter to the firm informing it that it may bill the cabinet for charges incurred while working on the project.

Section 17. Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet.

(1)(a) A project supervisor shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project supervisor.

(c) The project supervisor shall be responsible for coordinating all cabinet activities with the firm and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the firm's activities; 2. Reporting the status of these activities to the appropriate authority;

3. Periodically reviewing the work to determine if the work:

a. Is acceptable;

b. Is in accordance with the agreement for the particular project; and

c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation.

(2)(a) During the project, the firm may subcontract with other firms to perform specialized services in a manner similar to Section 13(4)

of this administrative regulation. The subcontractor shall be prequalified by the cabinet if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subcontractor are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent change orders, the firm shall submit a request for a fee adjustment for the manhours to be performed by the subcontractor.

(c) If the subcontractor services are not subject to prequalification procedures and exceed $25,000, they shall be reviewed by the Department of Fiscal Management for reasonableness of cost. For subcontracts equal to or less than $25,000, the Director of the Division of Specialized Programs or other negotiation unit upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section 18. Contract Modifications. (1) When it is determined by either the firm or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

(a) Change in termini or section;

(b) Addition of major phases of work to the negotiated scope of work;

(c) Modification of previously approved work resulting from factors beyond the control of the professional firm;

(d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a change order consideration are identified in the original contract;

(e) Delay by the cabinet as outlined in each contract; or

(f) Use of a subcontractor for services previously identified to be done by the firm or other subcontractor; or

(g) Availability of current audit established in accordance with Section 11 of this administrative regulation.

(2) The request for a contract modification may be originated by the Division of Specialized Programs, user division, highway district office or the firm.

(3) When the director or office head of the user division determines the change is appropriate, the user division shall advise the firm in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement. When additional or reduced compensation is justified, the user division shall request a revised proposal from the firm.

(4) The contract modification shall be negotiated using the procedures set forth in Section 13 of this administrative regulation.

(5) The Division of Specialized Programs or other negotiation unit shall send the Change Order form TC 61-5 as revised August, 1986 or the Change Order form, TC 63-53 revised August, 1986, to the firm for its approval. These forms are incorporated by reference as a part of this administrative regulation.

(6) After approval by the cabinet, the Change Order, LRC's Proof of Necessity form and other supporting documentation shall be submitted to the LRC Personal Service Contract Review Subcommittee.

(7) For projects requiring FHWA oversight, the approved Change Order shall be sent to the Federal Highway Administration for approval.

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved Change Order.

Section 19. Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the firm for future reference.

(2) The project supervisor or the director of the user division shall review the work performed by the firm, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the firm.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the firm and prepare written documentation of the firm's performance on the project.

(4) The user division shall send the firm written documentation of the firm's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Specialized Programs and in the firm's experience record file.

(5)(a) The firm may appeal in writing a below average rating to the user division director within thirty (30) days of written documentation of the firm's performance for the project.

(b) The appeal shall specifically set forth the reasons why the firm believes the below average rating is in error.

(c) The user division director shall notify the firm within thirty (30) days from the firm's appeal of the director's decision of whether or not to revise the performance rating.

(d) The firm may appeal in writing the user division director's decision to the chairman of the consultant prequalification committee within thirty (30) days.

(e) The consultant prequalification committee shall review all documentation relating to the firm's performance for the project. The committee may discuss the performance rating with the project supervisor or the firm.

(f) The committee shall notify the firm and the user division of its decision within ninety (90) days from the firm's appeal.

(g) If the firm's appeal is denied by the consultant prequalification committee, it may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial of its appeal by the consultant prequalification committee.

(h) The State Highway Engineer shall notify the firm of his decision within thirty (30) days.

(i) The decision of the State Highway Engineer shall be final.

(j) If the performance evaluation documentation is revised, the initial documentation shall be removed from all files and replaced with the revised performance document.

(6) The Director of the Division of Specialized Programs or head of other negotiation unit shall request the Department of Fiscal Management to perform a final audit if appropriate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the firm. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section 20. Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the firm.

(2) When the cabinet decides to cancel a professional services contract, the Division of Specialized Programs or other negotiation unit shall notify the firm of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall be liable only for payment of services up to the date of cancellation of the contract as specified by the terms of the contract.

Section 21. Payments to Firms. Before payment of a partial or final request for payment, the cabinet shall review the work of the firm, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be

submitted by the firm as agreed upon in the contract. The firm shall submit an Engineer's Pay Estimate, TC 61-408 revised March, 1988 with a progress report as an invoice to the chief district engineer or director of the user division. This form is incorporated by reference as a part of this administrative regulation.

(2) The chief district engineer or director of the user division or his designee shall review the estimate, verify that the work has been completed as described in the document, and sign the engineer's pay estimate.

(3) Final invoices and requests for payment shall be authorized only after all work has been reviewed and accepted or approved, including any final reports prepared by the firm. All terms and conditions of the contract shall be satisfactorily met and the final audit shall be performed prior to processing the final payment.

Section 22. Material Incorporated by Reference. All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Specialized Programs, 7th Floor State Office Building, 501 High Street, Frankfort, KY 40622. Its telephone number is (502)564-4555. Its office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
BOB BODNER, Executive Director
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 22, 1993 at 2 p.m. local prevailing time in the Transportation Cabinet, Room 1003 on the Tenth Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by July 17, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made 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 July 17, 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 July 17, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Sandra G. Pullen

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(a) Direct and indirect costs or savings to those affected: There is an expense to each firm which averages $300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately $500 per proposal.

1. First year: With 250 firms prequalified each year the cost of prequalification to the industry is approximately $75000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about $600,000 to prepare the proposals.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(b) Reporting and paperwork requirements: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A.

(2) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Specialized Programs constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Specialized Programs is $300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately $900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assure of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(3) Assessment of anticipated effect on state and local revenues: None.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Rather than specifically placing long and complicated advertisements in a newspaper for each project proposal requested, the Transportation Cabinet has elected to issue a procurement bulletin approximately four times each year. This bulletin will provide all of the information that would appear in an advertisement plus other information that is beneficial to firms when preparing proposals. The cabinet will mail these bulletins to every prequalified firm as well as placing newspaper advertisements regarding the availability of the bulletin. This procedure was adopted at the request of the professional engineering community in Kentucky. This procedure will save approximately $80,000 per year. The alternative of allowing a firm which has a contract with the Transportation Cabinet to charge all travel costs even when the firm received the job based on the strength of the qualification of their personnel in or near a Kentucky office was rejected. Too often a firm receives a contract and repeatedly transports expensive, out-of-state personnel to Kentucky to perform the work. Therefore, the limit on travel expenses was included in the administrative regulation. The alternative of giving extra weight to Kentucky-based firms in evaluating a proposal was rejected. There is no authority in KRS Chapter 45A to give this extra weight and the cabinet felt without this specific authority there would quickly be an upheld challenge.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: There is a conflict between KRS 45A.825(1) and 600 KAR 1:100 Section 4(12).

(a) Necessity of proposed administrative regulation if in conflict: With 250 firms requesting prequalification each year, there is not sufficient staff available in the Department of Highways to review and evaluate 250 prequalification forms at the same time. The cabinet has been reviewing the prequalification forms for each firm on the

anniversary date of its original prequalification. This evens out the workload and does not unnecessarily delay the renewal process.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: During the 1992 legislative session the Transportation Cabinet pointed out its inability to comply with KRS 45A.825(1).

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. There are different requirements for the prequalification categories. In addition subcontractors do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code, 23 CFR 172, 48 CFR 1, and 49 CFR 18.

2. State compliance standards. The state has mandated that both the Transportation Cabinet and its contractors comply with the federal requirements when federal highway funds are used in funding the project.

3. Minimum or uniform standards contained in the federal mandate. The federal mandates specify the accounting procedures the firms must use, the auditing procedures, and the contracting procedures to be followed when federal funds are used.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The accounting procedures are extended to all prequalified firms regardless of the source of funding for the project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A prequalified firm may be selected for a federally-funded project at any time. Therefore, even if it has only previously been selected for state-funded projects, it has to maintain its financial records in accordance with the federal mandate.

TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF TRAFFIC

603 KAR 3:080. Advertising devices.

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

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

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

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

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

(a) Has not displayed any advertising matter;

(b) Has displayed obsolete advertising matter; or

(c) Has needed substantial repairs.

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

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

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

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

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

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

(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 is applied to FAP highways only, 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 is applicable to FAP highways only, 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 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 is applicable to FAP highways only, 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, 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:

(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) 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) 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) 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.

(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) 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) 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) 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) 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) 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. Repeal of Regulation. (1) 603 KAR 3:060, Advertising devices on interstate, parkway and federal-aid primary highways is repealed.

JERRY D. ANGLIN, Deputy Secretary and Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on July 23, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Room 1003 on the Tenth Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by July 18, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by July 18, 1993. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until July 18, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen. Staff Assistant, Transportation Cabinet, 1001 State Office Building, 501 High Street, Frankfort, Kentucky

40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Sandra G. Pullen

(1) Type and number of entities affected: All owners of outdoor advertising devices in Kentucky.

(a) Direct and indirect costs or savings to those affected: Even though this is a new administrative regulation, it only makes one policy change from 603 KAR 3:060. It is now possible for a nonconforming advertising device destroyed by an act of vandalism to be rebuilt. That change can mean a savings of thousands of dollars for those few owners who have an advertising device destroyed by vandals.

1. First year: $10,000 since there is one nonconforming billboard destroyed by vandals which can now be rebuilt.

2. Continuing cost or savings: Will vary depending on the number of nonconforming billboards destroyed by vandals. Each year the number of nonconforming billboards is diminished and ultimately there will be none.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None as a result of this change.

(b) Reporting and paperwork requirements: Owners whose nonconforming billboard has been destroyed by vandals will have to apply to the Department of Highways to reconstruct the billboard. They will have to show in the application that the replacement billboard will be as close to the other as possible.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: With this one policy change, the Department of Highways will ultimately have to purchase nonconforming billboards which are destroyed by vandals. At the present time, if one is destroyed, it cannot be reconstructed.

1. First year: None

2. Continuing costs or savings: It is impossible to know how many nonconforming billboards might be destroyed by vandals. However, the cost to the Department of Highways will ultimately be in excess of $50,000 per billboard destroyed by vandals and allowed to be rebuilt.

3. Additional factors increasing or decreasing costs: None

(b) Reporting or paperwork requirements: Review and evaluation of any applications received.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: It was brought to the attention of the Transportation Cabinet that the Federal Highway Administration's regulations allow the reconstruction of a nonconforming billboard destroyed by vandals even in a state with a bonus agreement in place. When the federal government confirmed this, the Transportation Cabinet Secretary with the advice of the cabinet's general counsel agreed to make the change. The Federal Highway Administration pointed out that without allowing vandalized billboards to be reconstructed, it seems to be an encouragement to antibillboard persons to vandalize nonconforming billboards.

(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 amendments made to the administrative regulation after the hearing, make no real changes to this Regulatory Impact Analysis.

Tiering: Was tiering applied? Yes. More stringent standards are applied along interstate highways and parkways than along FAP routes. In addition, less stringent standards are applied to on-premise advertising devices than to off-premise advertising devices.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 750 and the Bonus Agreement executed by the Federal Highway Administration and the Kentucky Department of Highways. In addition 23 USC 148 establishes the Great River Road as a scenic highway.

2. State compliance standards. Outdoor advertising devices are controlled on the interstate highways, parkways and federal aid primary highways. Interstates and parkways are treated the same with more control imposed on those highways.

3. Minimum or uniform standards contained in the federal mandate. Outdoor advertising devices are mandated to be controlled on the interstate highways, parkways and federal aid primary highways. The parkways are required to be treated as federal aid primary highways and less control is required in "Cotton Areas" on interstate highways. Cotton Areas are those areas with a commercial or industrial use and where the state owned the highway right-of-way prior to 1956. Scenic highways shall not have new billboards erected along them.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is more than one federal mandate operating here. The basic mandate is the federal Highway Beautification Act governed by 23 CFR Part 750. However, Kentucky is one of the states which voluntarily agreed in 1961 to stricter controls on outdoor advertising devices within 660 feet of interstate and parkway highways. Kentucky received over $2.5 million in bonus payments since entering into the Bonus Agreement with FHWA. Violation of the agreement would cause those funds plus others spent in removing billboards to be repaid to the federal government. In addition, Kentucky has not allowed the less stringent controls in "Cotton Areas". This would require an act of the General Assembly as well as requiring the Commonwealth to pay back much federal money received under the bonus agreement.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Assistance and Intervention Services

703 KAR 3:205. Management improvement program.

RELATES TO: KRS 158.780, 158.785

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.780, 158.785

NECESSITY AND FUNCTION: KRS 158.780 and 158.785 require the State Board for Elementary and Secondary Education to establish a program for management improvement services for school districts which demonstrate such a critical lack of efficiency or effectiveness in governance or administration that state mandated corrective action or state control of the district is required. This administrative regulation outlines the operational procedures for the management improvement program.

Section 1. (1) The Kentucky Department of Education shall collect data from local school districts pursuant to KRS 158.785(2). The data shall include instructional and operational data routinely submitted by the districts, and other information as requested by the Kentucky Department of Education.

(2) If a review of data, such as instructional and operational data, regarding a school district indicates significant deficiencies, the Department of Education staff shall conduct an on-site review.

(3) The on-site review shall include the examination of local school records and interviews with school district officials, staff, and

community leaders. The on-site review may examine school district operations in one (1) or more of the following areas:

(a) Governance policy and procedures;
(b) Instructional programming and organization;
(c) Fiscal management and accountability procedures;
(d) The maintenance and condition of the physical plant;
(e) Facility construction;
(f) Student transportation; and
(g) Community perception and support.

Section 2. (1) If the data review and school district investigation outlined in Section 1 of this administrative regulation, reveal significant deficiencies, the commissioner of education shall determine whether a comprehensive management audit is appropriate.

(2) The comprehensive audit shall include an investigation of the district's compliance with state and federal statutes and administrative regulations and local board policies. The audit shall include an on-site review, investigation, and analysis of the governance and administration of the school district to determine if a significant lack of efficiency and effectiveness exists in the following areas:

(a) Planning - failure to develop, adopt and implement planning processes that allow for public review and timely action by the board and administration regarding management of the administrative and business activities of the school district and of the management of the instructional program;

(b) Operational support - failure to provide the operational support services required to operate an efficient and effective school system including such factors as:

1. Maintenance and operation of the physical plants - failure of the district to maintain school building cleanliness and safety including such factors as:

a. Failure to develop and maintain an accurate record of the maintenance needs and expenditures.

b. Failure to budget and expend funds necessary to maintain the physical plant.

c. Failure to employ maintenance and operation staff who provide clean and safe school buildings.

d. Failure to make efficient use of personnel as indicated by excessive staffing when compared to school districts of similar size and funding.

e. Failure to make repairs that prevent costly and unnecessary maintenance expenditures.

f. Failure to ensure that existing facilities are adequately insured;

2. Facility construction - failure to manage a school facility construction program that is in compliance with 702 KAR Chapter 4 and is planned, executed, and completed to ensure that public funds are expended in a responsible manner including such factors as failure to:

a. Develop and implement a planning process for identifying the need for new or improved facilities.

b. Maintain an up-to-date facility survey or ensure that regulatory approvals are secured.

c. Develop and implement plans to receive the allowable benefit from School Facilities Construction Commission.

d. Follow proper bidding requirements and develop and maintain accurate records of expenditures and authorization of expenditures on school construction projects.

e. Institute an administrative oversight process to ensure that facility construction activities are efficient and accountable for both local and state funds.

3. Maintenance and operation of the transportation system - provide and maintain an efficient transportation system including such factors as failure to:

a. Provide training for personnel responsible for the safe transportation of children in accordance with State Board for Elementary and Secondary Education administrative regulations.

b. Develop and implement policies and procedures regarding the use of district-owned vehicles.

c. Purchase and maintain equipment to safely and efficiently transport children to school.

d. Establish transportation routes that minimize public expenditure and time children spend enroute to school.

e. Follow bidding requirements for the purchase of equipment and materials necessary to conduct the school's transportation program.

4. School food services - failure to develop an efficient system of school food services including such factors as failure to:

a. Develop and maintain an accurate record of school food service expenditures.

b. Utilize federal and local resources to operate a nutritious program in a cost effective manner.

c. Employ school food service staff who provide meals in accordance with federal and state guidelines.

d. Make efficient use of personnel as indicated by excessive staffing when compared to school districts of similar size and funding;

(c) Fiscal management - failure to perform the appropriate planning, budgeting, fund management, and accounting responsibilities required for the fiscal management of the school district including such factors as failure to:

1. Assess the need for expenditures.

2. Recommend use of available funds according to an established set of priorities.

3. Maintain accurate records of expenditures and authorization of expenditures as required for auditing purposes.

4. Comply with purchasing requirements applicable to school districts.

5. Implement investment policies to ensure that all public funds are invested safely and productively.

(d) Personnel administration - failure to ensure school district staff are prepared to perform the required professional and staff responsibilities in an effective and efficient manner, including such factors as failure to:

1. Develop and implement employment practices and procedures that ensure the selection and placement of the most qualified personnel.

2. Train and evaluate the professional staff of the district as required by applicable laws.

(e) Instructional management - failure to develop and maintain district-level instructional policy including such factors as failure to:

1. Maintain a curriculum consistent with the valued outcomes or applicable laws.

2. Provide the resources necessary to support the instructional program.

(3) Deficiencies identified and established in some or all of the factors listed in this section may constitute a pattern of a significant lack of effectiveness and efficiency in the governance and administration of the school district.

Section 3. (1) Following the comprehensive audit, the department staff shall prepare a report of the comprehensive audit and the commissioner shall determine if there exists a pattern of a significant lack of effectiveness and efficiency in the governance or administration of the school district.

(2) If the commissioner determines that the comprehensive audit does establish an existing pattern of a significant lack of effectiveness and efficiency and state assistance or state management is necessary to correct the inefficiencies and ineffectiveness, he shall place a recommendation to declare the district "state-assisted" or "state-managed" before the state board as specified in Section 4 of this administrative regulation.

(3) If the commissioner does not place a recommendation before the state board, the department shall convey the comprehensive report to the school district for its information and use.

(4) If the local district agrees with the commissioner's recommendation to declare the district "state-assisted" and the district waves the

right to participate in the hearing before the state board, the commissioner will place this recommendation before the State Board for Elementary and Secondary Education for their approval without a hearing.

Section 4. The procedure for submitting a recommendation to the state board regarding the declaration of a school district as a "state-assisted" or "state-managed" district shall include the following:

(1) The commissioner shall file with the state board his written recommendation along with supporting information, and he shall arrange the scheduling of a hearing on the matter before the state board;

(2) At least twenty (20) days before the scheduled hearing, the commissioner of education shall provide the school district's superintendent and the school district's board of education with a copy of the written recommendation and supporting information, as well as written notice of the date and place at which the hearing before the state board shall be held;

(3) The commissioner and the school district may be represented by counsel and may present witnesses; and

(4) After completion of the hearing, the state board may declare the school district as a state-assisted or state-managed district, and the board shall issue written findings, specifying the basis for the declaration.

Section 5. (1) If a school district is declared a state-assisted or state-managed district, the district shall develop and implement an improvement plan that identifies the deficiencies and the corrective actions necessary to improve school district governance and administration. The improvement plan shall be subject to approval by the state board.

(2) The improvement plan shall include:

(a) Specific objectives and strategies to correct deficiencies in defined time frames; and

(b) The identification of local board and individual administrative staff responsibilities and activities that shall be required to improve school district governance and administration.

(3) A school district declared state-assisted shall remain a state-assisted district until:

(a) The commissioner recommends to the state board and it determines that sufficient progress has been made in implementing the improvement plan; or

(b) The state board makes a determination that the district shall be state-managed.

Section 6. The local school district declared a state-assisted or state-managed district shall provide to the commissioner monthly reports indicating the status of improvement activities in the district.

Section 7. 702 KAR 3:201, Management assistance program procedures, is hereby repealed.

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

APPROVED BY AGENCY: June 15, 1993

FILED WITH LRC: June 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written request for a transcript is made. Anyone wishing to comment but not caring to be heard at the public hearing, may submit written comments on the proposed administrative regulation. Written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation should be addressed to Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Sandy Gubser

(1) Type and number of entities affected: Local school districts with serious management problems.

(a) Direct and indirect costs or savings to those affected: NA

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effect upon competition):

(b) Reporting and paperwork requirements: Monitoring of district progress and district progress reports are required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: NA

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: KDE monitoring and reports are required.

(3) Assessment of anticipated effect on state and local revenues: NA

(4) Assessment of alternative methods; reasons why alternatives were rejected: NA

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied: No. Applies equally to all districts.

BUREAU FOR LEARNING SUPPORT SERVICES
Department of Education
Office of Special Instructional Services

705 KAR 2:031. Repeal of 705 KAR 2:130 and 705 KAR 2:030.

RELATES TO: KRS 156.035, 156.070

STATUTORY AUTHORITY: KRS 156.035, 156.070

NECESSITY AND FUNCTION: 705 KAR 2:130 and 705 KAR 2:030, both relating to vocational education funding, are no longer required because the funding formula does not utilize foundation program units and instead is based on the SEEK funding formula.

Section 1. 705 KAR 2:030, Foundation program units, is hereby repealed.

Section 2. 705 KAR 2:130, Distribution of federal funds for local school district consumer and homemaking programs, is hereby repealed.

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

Thomas C. Boysen, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 15, 1993
FILED WITH LRC: June 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 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 July 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless written request for a transcript is made. Anyone wishing to comment but not caring to be heard at the public hearing, may submit written comments on the proposed administrative regulation. Written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation should be addressed to Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Rodney Kelly
1. Type and number of entities affected: Local school districts - 176.
(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 effect upon competition): N/A
(b) Reporting and paperwork requirements: Vocational units will not be calculated as a basis for funding.
2. Effects on the promulgating administrative body: This regulation is obsolete as it refers to foundation units which have been replaced with the SEEK funding formula for local school districts.
(a) Direct and indirect costs or savings: None
(1) First year: None
(2) Continuing costs or savings: None
(3) Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
3. Assessment of anticipated effect on state and local revenues: None
4. Assessment of alternative methods; reasons why alternatives were rejected: This regulation is obsolete.
5. Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: 705 KAR 4:230 has duplicate information.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
6. Any additional information or comments: Any relative information in this regulation is incorporated in 705 KAR 4:230, General program standards for secondary vocational programs.
TIERING: Was tiering applied: No. Applies equally to all districts.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

780 KAR 2:015. Administration of technical institutes.

RELATES TO: KRS 151B.025, 151B.030, 151B.110, 151B.145
STATUTORY AUTHORITY: KRS 151B.025, 151B.030
NECESSITY AND FUNCTION: To establish procedures for the administration of technical institutes.

Section 1. The State Board for Adult and Technical Education hereby adopts and incorporates by reference the Technical Institute Standards and Measures, effective May 21, 1993. Copies are available to the public for inspection and copying at the Office of the Kentucky Tech System, Capital Plaza Tower, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m.

Section 2. The Office Head of the Kentucky Tech System shall be responsible for administration of the technical institutes under the direction of the Commissioner of the Department for Adult and Technical Education.

Section 3. Technical institutes shall receive formal evaluations every five (5) years in accordance with Technical Institute Standards and Measures.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: June 10, 1993
FILED WITH LRC: June 15, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 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 by July 22, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, 502/564-4286

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly H. Haverstock
(1) Type and number of entities affected: Approximately five Kentucky Tech System schools which offer Category I programs pursuant to 780 KAR 2:130(4). Category I programs may carry technical degree status.
(a) Direct and indirect costs or savings to those affected:
(1) First year: One or two staff positions may be needed, e.g., Dean of Instruction, media or library staff. However, present staff may be used for these positions.
(2) Continuing costs or savings: Potential for cost savings through more efficient program delivery system in these schools.
(3) Additional factors increasing or decreasing costs: (Note any affects upon competition) Increased capacity will decrease the cost per student.
(b) Reporting and paperwork requirements: Increase in required planning documents and documentation of self-study, annual reports,

and five-year evaluations.

(2) Effects on the promulgating administrative body: Redirected staff time will be used to implement and administer technical institutes

(a) Direct and indirect costs or savings: None. Administration of the technical institutes will require the same staff and resources as administration of schools at the present time.

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal increase in reporting and paperwork due to responding to submissions by the technical institute and due to monitoring responsibilities.

(3) Assessment of anticipated effect on state and local revenues: Increase of revenue from tuition realized by reorganizing delivery of instruction whereby more students can be served with present staffing within the existing facilities.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method is not designating and administering schools known as technical institutes. That is the method in use today. The Workforce Development Cabinet is seeking to move toward technical degrees in high-tech postsecondary programs in the Kentucky Tech System. This alternative method will allow the cabinet to move forward in its mission to better serve the workforce training needs of the Commonwealth.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: In the view of the Workforce Development Cabinet, there is no conflict. However, this regulation incorporates by reference the Technical Institute Standards and Measures which provides for technical degrees. KRS 151B.025 provides the department authority to manage, control, and operate "nondegree" postsecondary technical education programs. KRS 151B.115 provides that the state board shall not operate degree programs identified as associate, baccalaureate, or graduate degrees offered by the colleges and universities of the Commonwealth. Therefore, the Cabinet does not believe the offering of technical degrees is in conflict with KRS 151B.025, 151B.115, or any other statute, rule, regulation or governmental policy.

(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: The State Board for Adult and Technical Education feels very strongly that positive recognition for excellent programs in the Kentucky Tech System of schools is long overdue. This regulation provides incentives to this school system to strive for excellence through achieving technical institute status and awarding technical degrees to students who have worked hard to earn them. Technical institutes will be available for students who do not go to college but are highly motivated and capable of achieving excellence in a technical field. The vast majority of students in Kentucky do not go on to complete college. College, is definitely not for everyone. Technical institutes and technical degrees offer a much-needed opportunity for many students.

TIERING: Was tiering applied: No. Tiering was not applied. Each and every postsecondary Kentucky Tech school which receives designation as a technical institute will be administered uniformly under the Technical Institute Standards and Measures adopted by reference in this regulation.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

780 KAR 4:030. Technical degree requirements for postsecondary students.

RELATES TO: KRS 151B.110

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education all necessary power and authority in administering the state's vocational education programs. This administrative regulation is necessary in order to set a statewide standard for awarding technical degrees to postsecondary students in technical institutes and state vocational-technical schools.

Section 1. Eligible Programs, Kentucky Tech Program Listing. (1) The Kentucky Tech Program Listing, effective June 10, 1993, incorporated by reference, is adopted and published annually. Copies are available to the public at all Kentucky Tech System schools and from the Office of the Kentucky Tech System, Capital Plaza Tower, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601 between 8 a.m. and 4:30 p.m.

(2) Only those programs that are identified as Category I admissions criteria in the program listing are eligible for technical degree status. Programs that meet all technical degree criteria in technical institutes or state vocational-technical schools may award technical degrees.

Section 2. The following requirements shall be met before a technical degree is awarded to a postsecondary vocational education student. Each applicant must:

(1) Have earned a high school diploma or a General Education Development (GED).

(2) Meet the exit test score on the Test of Adult Basic Education (TABE) as specified in 780 KAR 2:130 or a comparable test modified for students with disabilities.

(3) Complete the required courses for the technical degree or successfully pass the Special Technical Education Proficiency (STEP) exam for a course or courses.

(4) Pass a written occupational achievement test prepared by the Office of Kentucky Tech and validated by Kentucky vocational teachers for the particular occupational program. The test shall be normed using scores from Kentucky students as established by procedures in the Division of Program Management.

(a) Students may take the occupational achievement test after verification by the instructor that the student has successfully demonstrated performance and technical knowledge.

(b) Students who fail to pass the occupational achievement test may retake the test at the next testing period.

(c) Students may take the exam a total of three (3) times.

(d) After the third exam, the student may not retake the exam without reenrolling in courses prescribed by the advising instructor.

(e) Reasonable accommodations will be made for students with disabilities.

Section 3. Clear and specific notice of technical degree requirements and levels of satisfactory achievement shall be disseminated to each student upon enrollment into a technical degree program.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: June 10, 1993

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 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 by July 22, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing

is received by that date, the hearing may be 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, 502/564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly H. Haverstock

(1) Type and number of entities affected: Students enrolled in Category I programs in twenty-three state vocational technical schools.

(a) Direct and indirect costs or savings to those affected: None. Student costs are not affected by this regulation.

(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: None. Students are not required by this regulation to have any additional reporting or paperwork.

(2) Effects on the promulgating administrative body: No effect. Students in Category I programs will receive technical degrees instead of diplomas. This neither increases nor decreases costs or savings or paperwork requirements for the administrative body.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There is a potential increase in state revenue in that more students can be served in Category I programs which are set up to award technical degrees in that these programs are organized to serve more students with the same number of instructors.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method, that is the method in use today, is the awarding of certificates or diplomas. A technical degree more accurately recognizes the student's achievement and reflects the higher-level status earned by students successfully completing these high-tech programs. The alternative method is outdated and not responsive to the needs of business and industry in today's economy.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: In the view of the Workforce Development Cabinet, there is no conflict. However, this regulation incorporates by reference the Technical Institute Standards and Measures which provides for technical degrees. KRS 151B.025 provides the department authority to manage, control, and operate "nondegree" postsecondary technical education programs. KRS 151B.115 provides that the state board shall not operate degree programs identified as associate, baccalaureate, or graduate degrees offered by the colleges and universities of the Commonwealth. Therefore, the cabinet does not believe the offering of technical degrees is in conflict with KRS 151B.025, 151B.115, or any other statute, rule, regulation or governmental policy.

(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: The State Board for Adult and Technical Education feels very strongly that positive recognition for excellent programs in the Kentucky Tech System of schools is long overdue. This regulation provides incentives to this school system to strive for excellence through achieving technical institute status and awarding technical degrees to students who have worked hard to earn them. Technical institutes will be available for students who do not go to college but are highly motivated and capable of achieving excellence in a technical field. The vast majority of students in Kentucky do not go on to complete college. College, is definitely not for everyone. Technical institutes and technical degrees offer a much-needed opportunity for many students.

TIERING: Was tiering applied: No. Tiering was not applied. All students in Category I programs will be treated uniformly with regard to the awarding of technical degrees.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education

780 KAR 7:035. Technical institute standards.

RELATES TO: KRS 151B.110, 151B.150
STATUTORY AUTHORITY: KRS 151B.110, 151B.150
NECESSITY AND FUNCTION: To set minimum standards for the establishment and operation of technical institutes.

Section 1. Definition. "Full-time equivalency (FTE)" means five (5) hours of instruction per student per day: classroom, laboratory, practicum, clinical, and co-op experiences shall count for full-time equivalency on an hour-for-hour basis.

Section 2. The technical institute shall serve a minimum of 300 postsecondary students full-time equivalency.

Section 3. The technical institute shall be used principally to provide technical education and training for persons who have completed high school requirements and who are preparing to enter the labor market or who are presently employed and need upgrade or retraining to maintain employment.

Section 4. The technical institute shall offer a minimum of twelve (12) different technical preparation programs, six (6) of which must be technical degree level.

Section 5. The technical institute shall meet the Technical Institute Standards and Measures incorporated by reference in 780 KAR 2:015.

Section 6. Each technical education program or class offered by the technical institute shall meet the minimum state requirements for curriculum.

Section 7. Students with disabilities who can benefit from the education and training programs with or without reasonable accommodation shall be served by the technical institutes.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: June 10, 1993
FILED WITH LRC: June 15, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, July 27, 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 by July 22, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, 502/564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly H. Haverstock

(1) Type and number of entities affected: Approximately five Kentucky Tech System schools which offer Category I programs pursuant to 780 KAR 2:130(4). Category I programs may carry technical degree status.

(a) Direct and indirect costs or savings to those affected:

(1) First year: One or two staff positions may be needed, e.g., Dean of Instruction, media or library staff. However, present staff may be used for these positions.

(2) Continuing costs or savings: Potential for cost savings through more efficient program delivery system in these schools.

(3) Additional factors increasing or decreasing costs: (Note any affects upon competition) Increased capacity will decrease the cost per student.

(b) Reporting and paperwork requirements: Increase in required planning documents and documentation of self-study, annual reports, and five-year evaluations.

(2) Effects on the promulgating administrative body: Redirected staff time will be used to implement and administer technical institutes.

(a) Direct and indirect costs or savings: None. Administration of the technical institutes will require the same staff and resources as administration of schools at the present time.

(I) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal increase in reporting and paperwork due to responding to submissions by the technical institute and due to monitoring responsibilities.

(3) Assessment of anticipated effect on state and local revenues: Increase of revenue from tuition realized by reorganizing delivery of instruction whereby more students can be served with present staffing within the existing facilities.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method is not designating and administering schools known as technical institutes. That is the method in use today. The Workforce Development Cabinet is seeking to move toward technical degrees in high-tech postsecondary programs in the Kentucky Tech System. This alternative method will allow the cabinet to move forward in its mission to better serve the workforce training needs of the Commonwealth.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: In the view of the Workforce Development Cabinet, there is no conflict. However, this regulation incorporates by reference the Technical Institute Standards and Measures which provides for technical degrees. KRS 151B.025 provides the department authority to manage, control, and operate "nondegree" postsecondary technical education programs. KRS 151B.115 provides that the state board shall not operate degree programs identified as associate, baccalaureate, or graduate degrees offered by the colleges and universities of the Commonwealth. Therefore, the cabinet does not believe the offering of technical degrees is in conflict with KRS 151B.025, 151B.115, or any other statute, rule, regulation or governmental policy.

(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: The State Board for Adult and Technical Education feels very strongly that positive recognition for excellent programs in the Kentucky Tech System of schools is long overdue. This regulation provides incentives to this school system to strive for excellence through achieving technical institute status and awarding technical degrees to students who have worked hard to earn them. Technical institutes will be available for students who do not go to college but are highly motivated and capable of achieving excellence in a technical field. The vast majority of students in Kentucky do not go on to complete college. College, is definitely not for everyone. Technical institutes and technical degrees offer a much-needed opportunity for many students.

TIERING: Was tiering applied: No. Tiering was not applied. Each and every postsecondary Kentucky Tech school which receives designation as a technical institute will be administered uniformly under the Technical Institute Standards and Measures adopted by reference in this regulation.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 2:120. Filing of examination report.

RELATES TO: KRS 304.2-250

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 that examiners file an examination report with the Department of Insurance no later than sixty (60) days following the completion of the examination.

Section 1. No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of the examination under oath.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 1, 1993

FILED WITH LRC: June 15, 1993 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for July 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, P. O. Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET), on July 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: Suetta W. Dickinson

Need for the proposed administrative regulation: The Department of Insurance will be undergoing review for accreditation by the National Association of Insurance Commissioners ("NAIC") in the very near future. The requirement that an examination report be prepared and submitted to the department no later than sixty days following the completion of the examination is one of the standards which the Kentucky Department of Insurance is required to meet to be accredited. No current statute or administrative regulation specifically deals with this type of disclosure of information.

(1) Type and number of entities affected: There are 16 examiners employed by the Department of Insurance.

a. Direct and indirect cost or savings to those affected:

1. First year: No additional cost or savings is expected.

2. Continued cost or savings: No additional costs or savings is expected.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: Examiners must prepare and submit an examination report no later than 60 days following completion of the examination.

(2) Effects on the promulgating administrative body:

a. Direct or indirect costs or savings:

1. First year: The administrative regulation will not have a significant effect on the Department of Insurance. The administrative regulation serves only to clarify the statute and put a time limit on the preparation and submission of examination reports. The department will not be subject to any additional savings or costs.

2. Continued costs or savings: No additional costs or savings is expected.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: The examiners must submit an examination report no later than 60 days following the completion of the examination.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why Alternatives were rejected: Under KRS 304.2-250, an examiner shall make a true report of the examination once the examination has been completed. No statute or administrative regulation specifies a time limit for the completion on this examination report. The Department of Insurance will be undergoing a review for accreditation by the NAIC in the near future. This requirement of having the report prepared and submitted to the department no later than 60 days after the completion of the examination is one of the standards which the Kentucky Department of Insurance is required to meet. This administrative regulation is being promulgated to specify the time limit that an examiner must have a report prepared and submitted to the department.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

TIERING: Tiering is not used since the proposed administrative regulation should apply to all examiners who preform examinations for the Department of Insurance.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 2:130. Disclosure of information regarding examinations.

RELATES TO: KRS 304.2-260, 304.2-270

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 to any provision of the Kentucky Insurance Code. This administrative regulation provides that the commissioner may disclose information regarding insurance company examinations to other state or federal agency officials, if they agree in writing that the information will be kept confidential.

Section 1. The Commissioner of Insurance may disclose the content of an examination report, preliminary examination report or results, or any matter relating to an examination report, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state, or agency of the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with KRS 304.2-260 and 304.2-270.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 1, 1993

FILED WITH LRC: June 15, 1993 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for July 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, P. O. Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET), on July 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: Suetta W. Dickinson

Need for the proposed administrative regulation: The Department of Insurance will be undergoing review for accreditation by the National Association of Insurance Commissioners ("NAIC") in the very near future. The provision that the Commissioner disclose information to another state or federal agency official, if they agree in writing that the information will be kept confidential is one of the standards which the Kentucky Department of Insurance is required to meet by the NAIC. No current statute or administrative regulation specifically deals with this type of disclosure of information.

(1) Type and number of entities affected: The Kentucky Department of Insurance is the main entity that will be affected by this administrative regulation. However, other state and federal officials and agencies will also be affected by this administrative regulation.

a. Direct and indirect cost or savings to those affected:

1. First year: The Department of Insurance may disclose information relating to company examinations to other state or federal agencies when requested, if a written agreement as to confidentiality can be reached.

2. Continued cost or savings: The Kentucky Department of Insurance may continue to disclose to other state or federal agencies information relating to company examinations, if they agree in writing that the information will be kept confidential.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: The Department of Insurance may disclose upon request information relating to company examinations to other state or federal agencies, if they agree that the information will be kept confidential.

(2) Effects on the promulgating administrative body:

a. Direct or indirect costs or savings:

1. First year: The Department of Insurance may disclose to other state or federal agencies information relating to company examinations, if the parties agree that the information will be kept confidential.

2. Continued costs or savings: The Department of Insurance may continue to disclose information regarding company examinations to other state or federal agencies, if they agree in writing that the information will be kept confidential.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: The department may disclose information regarding company examinations when requested by other state or federal agencies, if they agree that the information will be kept confidential.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives

were rejected: An alternative would have no provision in which the commissioner could disclose to other state or federal agencies information regarding company examinations and keep the information confidential. The department has been involved in litigation in which it was ruled that even though the information was disclosed, if it is disclosed according to restrictions that keep it confidential, then the information stays confidential.

(5) Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

TIERING: Tiering is not used since the proposed administrative regulation should apply to all company examinations and all state and federal agencies.

CABINET FOR HUMAN RESOURCES
Department for Social Services

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

RELATES TO: KRS 17.165, 199.894 to 199.898

STATUTORY AUTHORITY: KRS 194.050, 199.896(2)

NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to define terms used for child day care facilities.

Section 1. Definitions. These definitions shall be used in 905 KAR 2:001, 905 KAR 2:011, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(1) "Cabinet" means the Cabinet for Human Resources.

(2) "Caregiver" means child day care staff, including volunteers, who work in a child day care facility.

(3) "Child day care staff" means persons, including volunteers, who work in a child day care facility.

(4) "Day care" means care of a child in a facility which provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Director" or "provider" means the person responsible for the day-to-day operation of a facility or program for the care of children.

(6) "Facility" means:

(a) A Type 1 day care facility which is a facility:

1. Other than a dwelling unit which regularly receives four (4) or more children; or

2. Including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(b) A Type II child day care facility which:

1. Is a home or dwelling unit that is the full-time residence of the licensee; and

2. Regularly provides care apart from parents for seven (7), but not more than twelve (12) children.

(c) The following child day care settings including:

1. Day care;

2. Preschool;

3. Nursery;

4. Child care provided by employers for employees;

5. Kindergartens not accredited by the Kentucky Department of Education pursuant to 704 KAR 5:050;

6. Child care in recreational programs;

7. Montessori;

8. Headstart; and

9. Before or after school child care.

(d) The following child care settings shall not be included:

1. Summer camps certified by the Kentucky Department for Health Services as "youth camps" and providing care for school-age children;

2. Programs operated under Kentucky Department of Education preschool administrative regulations;

3. Grades one (1) through twelve (12) in private schools;

4. Summer programs operated by religious organizations in which a child attends no longer than two (2) weeks;

5. Child care programs operated by the armed services;

6. Child care provided while parents are on the premises other than the employment and educational site of parents;

7. Child care provided by educational programs which includes parental involvement with the care of the child including development of parenting skills;

8. Facilities operated by a religious organization while religious services are being conducted; and

9. Respite care to provide relief for the primary caregiver of a child for a specific period of time.

(7) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) Family child care home;

(c) Adult day care center;

(d) Adult day health care facilities;

(e) Family care home;

(f) Group homes for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;

(h) Intermediate care facilities;

(i) Nursing facilities;

(j) Nursing homes;

(k) Personal care homes;

(l) Skilled nursing facilities;

(m) Psychiatric residential treatment facilities;

(n) Child caring facilities;

(o) Child placing agencies;

(p) Rural primary-care hospitals;

(q) Alzheimer nursing homes;

(r) Youth camps;

(s) Boarding home;

(t) Alternate intermediate services for the mentally retarded or developmentally delayed.

(8) "Infant " means a child under one (1) year of age.

(9) "Nighttime care facility" means a facility in which children are received for regular, full, or part-time care during the night. The hours of a facility providing nighttime care shall conform to the hours established by the state fire marshal for care given after six (6) p.m.

(10) "Premises" means the building and contiguous property in which day care is provided and licensed.

(11) "Qualified substitute" means a person who meets the requirements of a caregiver.

(12) "Regularly" means the provision of child day care services at a facility for more than ten (10) hours per week.

(13) "Related" means the children, grandchildren, nieces, nephews, or children in legal custody of the operator of the facility.

(14) "Secretary" means the Secretary for the Cabinet for Human Resources.

(15) "School-age child" means a child attending kindergarten, elementary or secondary education.

(16) "Tactile activities" means activities of or relating to the sense of touch.

(17) "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(18) "Twelve (12) clock hours of annual training" means a Cabinet for Human Resources approved program of child development training that is completed by employees and owners who directly care for children as governed by KRS 199.896.

(19) "Twelve (12) clock hours of orientation and child development training" means a Cabinet for Human Resources approved

program that is completed by employees and owners who directly care for children, six (6) hours of which shall be completed within the first three (3) months of employment as governed by KRS 199.896 and the remaining six (6) hours shall be completed within the first year.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1993, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by July 17, 1993: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek
(1) Type and number of entities affected: The type and number of entities affected are between 1200 and 1500 currently licensed child day care facilities.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities. A change in the definition of facilities may result in a savings for some child care providers in that they no longer have to become licensed.
1. First Year: A change in the definition of facilities may result in a savings for some child care providers in that they no longer have to become licensed.
2. Continuing costs or savings: A change in the definition of facilities may result in a savings for some child care providers in that they no longer have to become licensed.
3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional factor increasing the costs to the entities affected is the definition of twelve hours of annual training and twelve hours of orientation and child development training required pursuant to KRS 199.896.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: The effect on the promulgating agency is a potential reduction in the number of licensed facilities and an increase in the number of certified family child care homes.
(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.
1. First Year: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.
2. Continuing costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.
(b) Reporting and paperwork requirements: Some revisions in the survey forms may be required to incorporate changes in the licensing standards.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals, and cabinet staff assessed various options in promulgating this regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Senate Bill 211 requires six hours of orientation and at least six hours of annual training for all employees and owners of child care facilities while this regulation defines twelve hours of orientation and child development training and twelve hours of annual training in child development. Additionally the definition of facility includes a location other than a dwelling unit which regularly receives four or more children for child day care which is in conflict with SB 211 which requires licensing for day care centers providing care for seven or more children.
(a) Necessity of proposed regulation if in conflict: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. In reference to the conflict in the number of children in a day care center requiring a license, there is a loophole in the statute for providers in nondwelling units providing care for four to seven unrelated children for which there would be no standards of care. This regulation defines facility as a location other than a dwelling unit which regularly receives four or more children and provides that they be licensed.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. The Licensing Standards Committee felt that additional training was necessary to enhance the quality of child care statewide which is the intent of legislature in KRS 199.892 to 199.896.
(6) Any additional information or comments: The Cabinet contacted Senator Johns who drafted SB 211 regarding the loophole on the number of children in a nondwelling facility and was informed that this was not the intent of the legislation. Although this situation may not occur, this regulation will provide adequate protection of children by requiring the licensing of this type of facility. The revision to the regulation to include a definition of human service center may enable the cabinet to close a gap in Kentucky's child care licensure review process by reviewing information that may enable the cabinet to deny or revoke a license or application for licensure. There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

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

RELATES TO: KRS 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: 905 KAR 2:010, Standards for all child day care facilities, is no longer required because 905 KAR 2:001, Definitions for 905 KAR Chapter 2, 905 KAR 2:090, Child care facility licensure, 905 KAR 2:110, Child care provider requirements, 905 KAR 2:120, Child care facility health and safety standards, and 905 KAR 2:130, Child care discipline contain the substance and content of 905 KAR 2:010.

Section 1. 905 KAR 2:010, Standards for all child day care facilities, is hereby repealed.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1993, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resource Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by July 17, 1993: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek
(1) Type and number of entities affected: The type and number of entities affected are between 1200 and 1500 currently licensed child day care facilities.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
1. First Year: There are no direct or indirect costs to the affected entities as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
2. Continuing costs or savings: There are no direct or indirect costs to the affected entities as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
1. First Year: There will not be any first year direct or indirect cost or savings to the Department for Social Services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
2. Continuing costs or savings: There will not be any continuing direct or indirect cost or savings to the Department for Social Services as the proposed regulation repeals 905 KAR 2:010 which has been replaced by the following administrative regulations: 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.
(b) Reporting and paperwork requirements: There will not any change in the Department for Social Services reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals, and cabinet staff assessed various options and the proposed regulations were promulgated.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.
(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.
(6) Any additional information or comments: There are no additional information or comments of which we are aware.
TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:090. Child care facility licensure.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish licensure requirements for child day care facilities.

Section 1. Application. Prior to licensure, a complete application shall be submitted to the cabinet. The application for a license to operate a day care center, L&R-204, herein incorporated by reference, may be obtained from the Office of Inspector General, 4th Floor Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky 40621. The application may be denied in accordance with Section 6 of this administrative regulation.

Section 2. License Issuance. (1) An individual, partnership, corporation, or other entity who has had a human services center certification, license, registration or permit to operate a human services center denied or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet has initiated denial or revocation action shall not apply for a license to operate a child care facility for a period of five (5) years from the date of revocation.
(a) After the expiration of the five (5) year period, the person may apply for a license after establishing that the applicant has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice since the time of the prior revocation.
(b) If a license is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the child care facility shall be inspected on at least a quarterly basis. Inspections shall be unannounced.

(2) A license shall be issued for:
(a) A specified physical location;
(b) Operation by a designated sponsor or owner;
(c) Age categories;
(d) A specified maximum number of children to be on premises at one (1) time including children related to the licensee. The number of children for which the facility is licensed shall be determined by:
1. Available space as determined by the State Fire Mar-shall's Office in conjunction with the cabinet;
2. Adequacy of program;
3. Equipment; and
4. Staff.
(e) Nighttime care, if provided; and
(f) Transportation, if provided.
(3) The license shall list the services to be provided by the facility.
(4) To qualify for a license, a child day care facility shall:
(a) Comply with local zoning requirements;
(b) Be approved by the Office of the State Fire Marshal or designee;
(c) Have an approved water and sewage system in accordance with local, county and state laws;
(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;
(e) Have liability insurance in the amount of $100,000 per child per occurrence; and
(f) Comply with provisions of this administrative regulation and 905 KAR 2:001, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.
(5)(a) The facility shall be in compliance with subsection (4) of this section or shall have submitted an acceptable plan of correction.
1. Compliance shall be ascertained through on-site inspections of the facility.
2. Regulatory violations identified during these inspections shall be transmitted in writing to the facility.
(b) The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected.
(c) Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan.
1. If the plan is unacceptable, the reasons shall be specified.
2. In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days.
(6) A license shall be issued when the facility has met the requirements contained in this administrative regulation and KRS 199.896.
(7) A license shall not be transferable. A change in ownership of a facility shall require a new application and fee. If circumstances covered by the license change, as listed in 905 KAR 2:110, Section 4(4)(b) through (e), notification shall be made in writing to the cabinet. These changes shall not require an additional fee.
(8) The license shall be posted in a conspicuous place.
(9) A facility shall not begin operation without a license to operate from the Cabinet for Human Resources.
(10) A facility operating without having a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be:
(a) Eighty (80) dollars for initial licensure for a Type I facility;
(b) Forty (40) dollars for initial licensure of a Type II facility; or
(c) Forty (40) dollars for renewal licensure.
(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the initial and renewal licensure application. Initial application fee and renewal fees shall not be refunded if a survey has been made by the Cabinet for Human Resources or the State Fire Marshall's Office.

Section 4. Inspections. Representatives of the cabinet shall at all times have the authority to make unannounced inspections of facility's:
(1) Premises;
(2) Records required by 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 through 905 KAR 2:130; and
(3) Programs.

Section 5. Renewal. (1) Licenses shall be renewed annually.
(2) The facility shall comply with the requirements of Sections 2 and 4 of this administrative regulation.

Section 6. Basis for Denial or Revocation. The Cabinet for Human Resources may deny or revoke a license or application:
(1) For failure to meet the standards of this administrative regulation;
(2) If the provider, an adult living in the provider's home or person under the supervision of the provider has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult;
(3) If the provider, an adult living in the provider's home:
(a) Has abused, neglected or exploited a child or an adult; or
(b) Is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.
(4) If the provider has had a human services center or facility registration, certification, permit or license denied or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet initiates denial or revocation action.

Section 6. Right of Appeal. (1) If a license or application has been denied or revoked, the licensee shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the secretary.
(2) Upon receipt of the request for a hearing:
(a) The secretary or his representative shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing.
(b) The secretary shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.
(c) The hearing officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.
(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. If license denial or revocation is upheld, the cabinet shall specify the date by which the facility shall close and the licensee shall be notified in writing.
(4) If one (1) of the grounds for denial, suspension or revocation set forth in Section 6 of this administrative regulation exists and the condition creates an immediate danger to the children in care, the cabinet may suspend or revoke the license immediately.
(a) The provider may request a postdeprivation hearing in writing within fifteen (15) days of receipt of the notice of suspension or revocation. The request shall be mailed to the Office of the Inspector General, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621.
(b) If requested, the cabinet shall conduct a hearing within thirty (30) days of receipt of the request. The hearing may be continued at the request of the provider.

Section 7. Incorporation by Reference. (1) The form necessary for the implementation of the application for license shall be herein incorporated by reference.
(2) Material incorporated by reference may be inspected or copied at the Inspector General's Office, CHR Building, 4th Floor, 275 East Main Street, Frankfort, Kentucky, office hours 8 a.m. - 4:30 p.m.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1993, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resource Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by July 17, 1993: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: The direct and indirect costs to the affected entities include the provision that authorizes the cabinet to deny, suspend, or revoke a license if the provider, adult living in the provider's home, or person under the supervision of the provider has abused, neglected, or exploited a child or an adult or if the provider has had a human services center or facility registration, certification, permit, or license denied or revoked.

1. First Year: First year costs may be incurred if the provider, adult living in the provider's home, or person under the supervision of the provider has abused, neglected, or exploited a child or an adult or if the provider has had a human services center or facility registration, certification, permit, or license denied or revoked and the cabinet denies, suspends, or revokes the provider's license.

2. Continuing costs or savings: Continuing costs may be incurred if the provider, adult living in the provider's home, or person under the supervision of the provider has abused, neglected, or exploited a child or an adult or if the provider has had a human services center or facility registration, certification, permit, or license denied or revoked and the cabinet denies, suspends, or revokes the provider's license.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Additional factors increasing the costs to the entities affected include the provision that if an applicant has had a human services center or facility certification, license, registration, or permit to operate revoked, they may not apply for certification as a licensed facility for five years and then only after establishing the ability to comply with the administrative regulation and completion of sixty hours of training in developmentally appropriate child care practice. Additionally the provider will be on probation for two years during which the home will be inspected at least quarterly.

(b) Reporting and paperwork requirements: The only additional reporting and paperwork requirements is if that the provider is on probation as a result of having a human services center or facility certification, registration, permit, or license revoked.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is that the Cabinet for Human Resources will be able to use the resources available to deny, suspend or revoke a license if the provider, adult living in the provider's home, or person under the supervision of the provider has had a human services center or facility certification, registration, permit, or license revoked or has committed abuse, neglect or exploitation of a child or an adult. This proposed administrative regulation also prohibits an applicant from applying for licensure if the applicant has had a human service center or facility certificate, registration, permit or license revoke for five years and establishes criteria for compliance and training prior to applying for licensure.

(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the additional coordination to verify that applicants for licensure have not had human services center or facility certifications, registrations, permits, or licenses revoked. Other direct or indirect costs may be incurred with the verification and follow up required if applicants have had a prior revocation and are on probation. Another direct or indirect cost that may be incurred is the costs of appeal hearings if the cabinet denies, suspends or revokes a license. Indirect savings to the agency will be the development of licensed day care centers in which the potential for abuse, neglect or exploitation has been decreased through compliance with these new provisions.

1. First Year: Additional costs to the agency may be incurred from the additional coordination to verify that applicants for licensure have not had human services center or facility certifications, registrations, permits, or licenses revoked. Other direct or indirect costs may be incurred with the verification and follow up required if applicants have had a prior revocation and are on probation. Another direct or indirect cost that may be incurred is the costs of appeal hearings if the cabinet denies, suspends or revokes a license. Indirect savings to the agency will be the development of licensed day care centers in which the potential for abuse, neglect or exploitation has been decreased through compliance with these new provisions.

2. Continuing costs or savings: Additional costs to the agency may be incurred from the additional coordination to verify that applicants have not had human services center or facility certifications, registrations, permits, or licenses revoked. Other direct or indirect costs may be incurred with the verification and follow up required if applicants have had a prior revocation and are on probation. Another direct or indirect cost that may be incurred is the costs of appeal hearings if the cabinet denies, suspends or revokes a certification. Indirect savings to the agency will be the development of licensed day care centers in which the potential for abuse, neglect or exploitation has been decreased through compliance with these new provisions.

3. Additional factors increasing or decreasing costs: Additional factors that may increase or decrease the direct or indirect costs to the agency include a reduction in the potential number of child abuse investigations as a result of the provisions that enable the cabinet to deny, suspend or revoke licensure for day care centers, the amount of staff time devoted to the coordination of data from other agencies and the development of interactive systems, and the actual number of appeal hearing based upon the denial, suspension, or revocation of a provider's license.

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements for the agency include coordination with other agencies to verify if human services center or facility certifications, registrations or licenses have been denied or revoked, processing new certifications when a provider changes locations, quarterly inspections of providers who are on probation, and some revisions in the survey forms will be required to incorporate changes in the administrative regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as these revisions are necessary to provide additional protection for children in the Commonwealth by enabling the cabinet to require liability insurance and to deny, suspend or revoke licensure if the provider or applicant cannot comply with the provisions of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or policy that are in conflict, overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: There are no conflicts in statute, administrative regulations or policy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There are no conflicts in statute, administrative regulations or policy.

(6) Any additional information or comments: These proposed

administrative regulations further strengthen the cabinet's ability to protect children from abuse, neglect, or exploitation by enabling the cabinet to deny, suspend, or revoke licenses or applications for licensure if the provider, adult living in the provider's home, or person under the supervision of the provider has committed abuse, neglect, or exploitation of a child or an adult or if the provider has had a human services center or facility registration, certification,or license revoked.

TIERING: Was tiering applied? No. Upon adoption of these administrative regulations, all licensed facilities or applicants for licensure shall be required to comply with the provisions of this administrative regulation statewide.

CABINET FOR HUMAN RESOURCES
Department for Social Services

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

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish provider requirements for child day care facilities.

Section 1. General. (1) The licensee shall be responsible for the operation of the facility in accordance with 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120, and 905 KAR 2:130.

(2) Staff shall be instructed in the requirements for operation and a copy of the minimum standards shall be available for their use.

(3) Information concerning children, their parents, relatives, or guardians shall be kept in strict confidence by the staff, except as otherwise required by law.

(4) Volunteers shall comply with the policies and procedures of the facility.

(5) Program policies and procedures shall be in writing and shall include personnel policies, job descriptions, organization charts, chain of command, and other procedures pertaining to the operation of the facility.

(6) Activities of persons living in a facility that is the dwelling unit shall not interfere with the day care program.

(7) Good personal hygiene shall be practiced by persons in the facility.

(a) Caregivers shall wash hands with soap and warm running water after diapering or toileting each child.

(b) Caregivers shall wash hands with soap and running water immediately before feeding children.

(8) The services to be provided within the facility shall be clearly stated when the application is made. A written statement of services and policies shall be given to parents.

(9) Parents or persons exercising custodial control of a child shall be permitted to visit the facility during regular hours of operation.

(10) The director or provider shall be responsible for the following:

(a) Development of a child care program which meets the requirements of this administrative regulation and 905 KAR 2:090, 905 KAR 2:120 and 905 KAR 2:130;

(b) Development of facility plans, policies and procedures;

(c) Supervision of personnel and their conduct at the facility, carrying out of personnel policies, scheduling daily activities, and management of staff meetings;

(d) Evaluation of the instructional activities of staff;

(e) Assurance that additional staff is available during cooking or cleaning hours if necessary to maintain regulated supervision of the children; and

(f) Provision for health, safety and comfort of children.

Section 2. Records. (1) The following records shall be maintained at the facility for five (5) years:

(a) Sufficient records to identify the individual children and to enable the person in charge to communicate with the parents or persons designated as being responsible for the child either at their home or place of employment, and in a medical emergency, with the family physician;

(b) Each child's medical history, along with authorization for emergency medical care, signed by the parent or guardian and left with the facility director at enrollment;

(c) Except as provided in KRS 214.036, a current immunization certificate showing that the child is immunized in accordance with 902 KAR 2:060 shall be on file within thirty (30) days of admission;

(d) Permission forms for trips off the premises signed by the parent or guardian;

(e) Daily attendance records of children;

(f) For each employee, a copy of the results of a negative tuberculin skin test or chest x-ray prior to employment and every two (2) years thereafter;

(g) A written schedule of staff working hours;

(h) A written record of staff training;

(i) A written plan for staff development;

(j) A written record of quarterly fire, earthquake and tornado drills;

(k) A written plan or diagram outlining the course of action in the event of natural or manmade disaster posted in a prominent place;

(l) Each facility shall obtain a criminal records check directly from the Justice Cabinet prior to initial employment of staff with supervisory or disciplinary authority over a minor, including cooks, bus drivers, substitutes and volunteers. If the volunteer does not replace staff, is never alone with children, and has no supervising responsibility, he shall not be considered a volunteer for the purpose of criminal records check;

(m) A written record of reports to the cabinet required in Section 4(1) of this administrative regulation; and

(n) The facility shall post the following for public inspection in the director's office or lobby:

1. A copy of the statement of deficiencies reports the facility has received from the cabinet and the plans of correction for the calendar year and permit interested parties to inspect facility files relating to deficiency statements and plans of correction;

2. A description of the services currently provided by the facility;

3. A listing of the rates currently charged for services provided by the facility;

4. A listing together with the charges for the services and items not included in the basic rate for which parents may be charged separately;

5. A copy of each court order pertaining to the quality of care or services provided in the facility; and

6. A copy of children and parental rights pursuant to KRS 199.898.

(2) Subsection (1) of this section shall not be construed to limit access to public records otherwise allowed pursuant to the provisions of KRS 61.872 to 61.884.

Section 3. Staff Requirements. (1) A director of a Type I facility providing child care shall:

(a) Be twenty-one (21) years of age;

(b) Have a high school diploma or a General Equivalency Diploma (GED);

(c) Meet one (1) of the following requirements:

1. Master's degree in Early Childhood Education and Development;

2. Bachelor's degree in Early Childhood Education and Development;

3. Master's degree or a bachelor's degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training;

4. Associate degree in Early Childhood Education and Development;

5. Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, plus two (2) years of verifiable full-time paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

6. Child development associate (CDA) plus one (1) year of verifiable paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

7. Diploma in Child Development Services from Kentucky Tech (Dictionary of occupational title: Director: preschool; Teacher: preschool); or

8. Three (3) years of verifiable full-time paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

(2) A director of a Type II facility providing child care shall:

(a) Meet the requirements for a Type I facility; or

(b) Be twenty-one (21) years of age;

(c) Have a high school diploma or GED;

(d) Have twelve (12) hours of orientation and child development training; and

(e) Meet one (1) of the following requirements:

1. Certificate in child development services from Kentucky Tech (Dictionary of occupational title, child care assistant);

2. One (1) year of verifiable paid experience working directly with children in a:

a. School-based program following Department of Education guidelines;

b. An early childhood development program (head start); or

c. Licensed or certified child care;

(3) A director of a licensed facility providing child day care on the effective date of this administrative regulation shall be deemed to have met the qualifications under subsection (1) of this section.

(4) The following staff requirements shall apply to a facility:

(a) A facility shall not employ a person convicted of an act involving the abuse, neglect or exploitation of a child as specified in 905 KAR 2:090, Section 6(2);

(b) A staff person shall be on duty who is annually certified in cardiopulmonary resuscitation (CPR), and currently trained in first aid by a certified instructor approved by the cabinet. This training shall be in addition to the twelve (12) clock hours requirement in subsections (1) and (2) of this section;

(c) One (1) adult shall be designated as being in charge. If the director is not present in the facility, the adult left in charge shall carry out the duties of the director;

(d) A minimum of two (2) qualified substitutes shall be available in case of need;

(e) The minimum of adult workers in a facility shall be sufficient to ensure that minors under eighteen (18) years of age and student trainees are under direct supervision. A person under the age of sixteen (16) shall not be counted as staff for the staff to child ratio;

(f) Controlled substance or alcohol use shall not be permitted on the premises during hours of operation;

(g) Smoking shall be permitted only in designated areas away from the children;

(h) Staff members shall remain awake while on duty except as specified in 905 KAR 2:120, Section 1(5)(f); and

(i) Require for a facility that is the full-time residence of the licensee that adults living in the home have on file at the facility:

1. Criminal records check; and

2. Tuberculosis skin test or, if positive, results of a chest x-ray.

(4) Twelve (12) clock hours of orientation and child development training during the first year and twelve (12) clock hours of annual training thereafter shall be required and shall be documented in writing by the trainer.

Section 4. Reports Made to the Cabinet for Human Resources. (1) The following shall be reported within twenty-four (24) hours:

(a) Communicable disease to the local health department in accordance with KRS 214.010;

(b) An accident or injury requiring extensive medical care, hospitalization, or death;

(c) An incident that results in legal action by or against the facility which affects a child or personnel; and

(d) An incident involving fire or other emergency.

(2) An incident of child abuse, neglect or dependency shall be reported as specified in KRS Chapter 620.

(3) A change of director shall be reported within one (1) week.

(4) Notification of the following shall be made to the cabinet to allow for approval before implementation:

(a) Change of ownership or sponsorship or major stockholder in corporation;

(b) Change of location;

(c) Increase in capacity;

(d) Hours of operation; and

(e) Change of services in the following categories:

1. Infant;

2. Toddler;

3. Two (2) years to school-age;

4. School-age;

5. Nighttime care; and

6. Transportation.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: June 4, 1993

FILED WITH LRC: June 7, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1993, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resource Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by July 17, 1993: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: Direct costs to the affected entities may be incurred from additional training requirements for owners and staff and specified requirements for the director of a facility.

1. First Year: First year costs to the affected entities may be incurred from the additional training requirements for owners and staff, specified requirements for the director of a facility.

2. Continuing costs or savings: Continuing costs to the affected entities may be incurred from the additional training requirements for owners and staff.

3. Additional factors increasing or decreasing costs (note any effects upon competition): An additional factor increasing the costs to the entities affected is the cost for facilities that are the full-time

residence of the licensee for criminal records checks and tuberculosis skin tests for adults living in the home.

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements include criminal records check and tuberculosis skin test for all adults living in the home of a facility that is the full-time residence of the licensee. Other paperwork requirements include providing for public inspection copies of each statement of deficiencies report the facility has received from the cabinet and each plan of correction for the past three years, each court order pertaining to the quality of care or service provided and a copy of children and parent rights pursuant to SB 211.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is a potential reduction in the number of licensed facilities and an increase in the number of certified family child care homes. This reduction in licensed facilities may reduce the workload for the Division of Licensing and Regulation.

(a) Direct and indirect costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

1. First Year: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

2. Continuing costs or savings: Additional costs to the agency may be incurred from the reduction in the number of licensed facilities but an increase in the number of certified family child care homes.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: Some revisions in the survey forms will be required to incorporate changes in the licensing standards regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the Fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals and cabinet staff assessed various options in promulgating this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Senate Bill 211 requires six hours of orientation and at least six hours of annual training for all employees and owners of child care facilities while this regulation requires twelve hours of orientation and child development training and twelve hours of annual training in child development. Additionally this regulation requires a location other than a dwelling unit which regularly receives four or more children unrelated to the provider to be licensed.

(a) Necessity of proposed regulation if in conflict: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. A location other than a dwelling unit could have received four to six children unrelated to the provider and not been required to comply with any health and safety standards as established for certified or licensed providers. The cabinet through this regulation required these locations to be licensed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. The Licensing Standards Committee felt that additional training was necessary to enhance the quality of child care statewide which is the intent of legislature in KRS 199.892 to 199.896. The cabinet attempted to harmonize this regulation, but determined that it was not the intent of the legislature to allow nondwelling unit locations to care for four to six children unrelated to the provider without being meeting health and safety standards.

(6) Any additional information or comments: The cabinet contacted Senator Johns to determine the intent of SB 211 and verify the need to license nondwelling unit locations that care for four to six children unrelated to the provider. There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

CABINET FOR HUMAN RESOURCES
Department for Social Services

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

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish requirements for health and safety standards for child day care facilities.

Section 1. Child Care Services. (1) Minimum staff-child ratios and group size for an operating facility shall be maintained as follows:

Age of Children	Ratio	Maximum Group Size*
Birth - 1 year	1 staff for 6 children	12
	(1 staff for 5 children	10)**
1 to 2 years	1 staff for 6 children	12
2 to 3 years	1 staff for 10 children	20
3 to 4 years	1 staff for 12 children	24
4 to 5 years	1 staff for 14 children	28
5 to 7 years	1 staff for 15 children	30
7 and older	1 staff for 25 children (for before and after school)	30
	1 staff for 20 children (for full day of care)	30

* Maximum Group Size is applicable only to Type I facilities.
** This provision shall become effective July 1, 1994. However, the effective date may be revised by administrative regulation to January 1, 1994, or to a date prior to July 1994, contingent upon the availability of additional federal funds for subsidized child care.

(a) In a Type I facility a group shall be separately maintained in a defined area unique to the group with specific staff assigned to and responsible for the group.

(b) The age of the youngest child in the group shall determine the staff-child ratio and maximum group size, if applicable.

(c) If the director's own or related preschool children or preschool children of day care staff receive care in the facility, they shall be included in the staff-child ratio.

(2) Each facility shall maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect while the children are under the supervision of employees of the facility. The program shall include procedures to inform facility employees of the laws of the Commonwealth pertaining to child abuse or neglect as specified under KRS Chapter 620.

(3) The facility shall provide a planned program of activities

geared to the individual needs and developmental levels of the children served. These activities shall provide experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being. The daily program shall be under adult supervision and provide:

(a) A variety of creative activities which may include the following:

1. Art;
2. Music;
3. Dramatic play;
4. Stories and books;
5. Science;
6. Block building; and
7. Tactile activities.

(b) Indoor or outdoor play in which the children make use of both small and large muscles.

(c) A balance of active and quiet play, including group and individual activities, both indoors and outdoors.

(d) Opportunities for a child to have some free choice of activities and to play apart from the group at times, if the child desires.

(e) Opportunities to practice self-help procedures in respect to clothing, toileting, handwashing, and feeding.

(f) Activity areas, equipment, and materials so arranged that the child's activities are visible to the supervising staff.

(g) Regularity of routines to afford the child the security of knowing what is coming next.

(h) Sufficient time for activities and routines so that children can progress at their own developmental rate.

(i) No long waiting periods between activities or prolonged periods during which children stand or sit.

(j) Television viewing by children shall be limited to program related areas.

(4) If school-age care is provided:

(a) A separate area or room shall be provided in a Type I facility.

(b) A child shall be provided a snack after school.

(c) Separate toilet facilities shall be provided for males and females, or a plan implemented to use the same facilities at separate times.

(5) If nighttime care is provided:

(a) A child shall not be permitted to spend more than sixteen (16) hours in the facility during one (1) twenty-four (24) hour period or day. If school-age children are served, time spent in school shall be included in the sixteen (16) hours limit.

(b) At least one (1) staff member shall be assigned responsibility for each sleeping room.

(c) If children are present for extended periods of time during their waking hours, the facility shall provide a program of well-balanced and constructive activities geared to the age levels and developmental needs of the children served.

(d) Children sleeping three (3) hours or more shall sleep in pajamas or nightgowns.

(e) School children shall be offered breakfast if they go to school from the facility.

(f) Staff shall:

1. In Type I facilities remain awake while on duty.
2. In Type II facilities remain awake until every child in care is asleep.

Section 2. Health needs of the child shall be met as follows:

(1) First aid supplies shall be available to provide prompt and proper first aid treatment and stored out of reach of children. Supplies shall be periodically inventoried to ensure that they are current. Reusable items shall be sanitized and maintained in a sanitary manner. First aid supplies shall include:

(a) Liquid soap;
(b) Adhesive bandages;
(c) Sterile gauze;
(d) Medical tape;
(e) Scissors;
(f) Tweezers;
(g) Thermometers;
(h) Flashlight;
(i) Cold pack;
(j) First aid book;
(k) Disposable latex gloves; and
(l) Ipecac syrup (to be given under direction of a licensed physician or the poison control center).

(2) A child showing signs of an illness that may be communicable to others in a day care setting shall not be admitted to the regular child care program. If a child becomes ill during the day, he shall be placed in a supervised area isolated from the rest of the children, the parent or designated person shall be contacted immediately and arrangements shall be made to remove the child from the facility.

(3) Prescription medications shall not be given to a child except as authorized by a licensed physician and with written daily request of the parent or guardian.

(a) The facility shall keep a written record of the administration of each medication, including time, date, amount and staff giving the medication.

(b) Medication shall be stored in a separate (locked) place out of the reach of children and shall be in the original bottle and properly labeled.

(c) Medication shall not be given to a child if the expiration date on the bottle has passed.

(4) Nonprescription medication shall be given to a child only with written daily request of parent or guardian.

(5) Each child shall be helped with personal care and cleanliness.

(6) Children shall not return from the toilet to activities without first washing hands. A child shall wash his hands with soap and warm, running water prior to eating and after toileting.

(7) Staff shall insure that diapering and toilet training shall be a relaxed, pleasant activity. Toilet training shall be coordinated with parent or guardian.

(8) Adequate quantities of freshly laundered or disposable diapers and clean clothing shall be available.

(9) Soiled diapers or wet clothing shall be changed promptly and stored in covered containers temporarily and shall be washed or disposed of at least once a day.

(10) When a child is diapered, the child shall be placed on a clean washable surface or disposable covering. Individual washcloths and towels or disposable towels shall be used to thoroughly clean and dry the child's buttocks unless otherwise prescribed by a physician. If staff wear disposable plastic gloves, gloves shall be changed and disposed of after each child is diapered. After diapering, staff shall wash their hands and disinfect the surface before diapering another child.

(11) If training chairs are used, they shall be emptied promptly and sanitized after each use.

(12) The infant's formula shall be prepared and provided by the parent. An exception may be made for a facility that participates in the child care food program, or provides formula as a fringe benefit to the parent.

(13) Bottles shall be individually labeled and promptly refrigerated.

(14) A child shall not be fed with a propped bottle.

(15) A child shall have rest periods not to exceed two (2) hours except for infants and toddlers, and time periods during nighttime care and extended hours. A child who does not sleep shall be permitted to play quietly after a reasonable rest period.

(16) Drinking water shall be freely available to a child and an individual drinking cup provided if no fountain is provided.

(17) Toilet articles like combs, brushes and toothbrushes used by a child shall be individual and plainly marked.

(18) The facility shall provide and serve nutritious snacks and meals.

(a) A child present at meal or snack times shall be served.

(b) The facility shall provide and serve breakfast or a midmorning snack, lunch, and a midafternoon snack and dinner, if appropriate.

(c) There shall be at least a two (2) hour lapse, but no longer than three (3) hours, between meals or snacks.

(d) Food prepared shall be in quantities reflecting the developmental stage of the child.

(e) Food requirements shall be as follows:

1. Breakfast shall include milk, bread, and fruit or vegetable or juice;

2. Snacks shall include two (2) of the following: milk, protein, fruit or vegetable or juice, or bread; and

3. Lunch and dinner shall include milk, protein, two (2) vegetables or a fruit and one (1) vegetable, and bread.

(f) If parents choose to provide food for their own child's meal or snack, or if food is catered, and the food does not meet the nutritional requirements listed, the facility shall provide additional food necessary to meet these requirements.

(g) A child shall be seated at eating time with sufficient room to manage food and tableware. Adults shall be present with children during eating times.

(h) Individual eating utensils shall be of size and design that a child can handle easily.

(i) Weekly menus shall be prepared, dated and posted in advance in a conspicuous place. Menus shall be kept on file. Substitutions shall be noted on the menu.

Section 3. Health and Sanitation. If the facility does not have a current food service permit issued under the authority of the Department for Health Services, as governed by 902 KAR 45:005, Food Service Code, it shall be in compliance with the requirements of this section.

(1) A facility that serves a meal shall have a three (3) compartment sink or other equipment, and procedures approved by the cabinet, for the purpose of washing and sanitizing dishes, silverware, eating and cooking utensils after use.

(2) Food supplies and protection are to be maintained as follows:

(a) Food shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption. Hermetically sealed, nonacidic and low-acidic food which has been processed in a place other than a commercial food-processing establishment shall not be used. Food served shall be from a source which is in compliance with applicable state and local laws and administrative regulations. Established commercial food stores are an acceptable source.

(b) Food, while being stored, prepared, displayed or served shall be protected against contamination from dust, flies, rodents and other vermin, unclean utensils and work surfaces, unnecessary handling, coughs and sneezes, flooding, drainage and overhead leakage.

(c) Potentially hazardous food shall, except when being prepared and served, be kept in a safe environment for preservation. The temperature for potentially hazardous foods shall be forty-five (45) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary periods of preparation and service.

(d) Frozen food shall be kept at a temperature of zero degrees Fahrenheit or below so as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures or under cool, potable running water, quick thawed as part of the cooking process, or by another method satisfactory to the health authority.

(e) Each cold-storage facility used for storage of perishable food in a nonfrozen state shall have an indicating thermometer or other appropriate temperature measuring device.

(f) Convenient and suitable sanitized utensils shall be provided and used to minimize handling of food where food is prepared.

(g) Poultry, pork and their products which have not been treated to destroy bacteria, including trichinae, shall be thoroughly cooked. Fruits and vegetables shall be washed before cooking or serving.

(h) Meat salads, poultry salads, and cream filled pastries shall be prepared with utensils which are clean and shall, unless served immediately, be refrigerated pending service.

(i) Food shall be stored in clean racks, shelves or other clean surfaces. Food in nonabsorbent containers may be stored on the floor if it is maintained in an acceptable sanitary condition.

(j) Individual portions of food served to a child shall not be served again. Wrapped food, which is still wholesome and has not been unwrapped, may be reserved.

(k) Poisonous and toxic materials shall be properly identified and stored in cabinets which are used for no other purpose, or stored in a place outside food storage, food preparation, and utensil storage areas.

(3) Health and disease controls shall be in place as follows:

(a) If a person who has job duties is known or is suspected to be infected with a communicable disease for which a reasonable probability for transmission exists due to the individual's job duties, the individual shall not perform these duties until such time as the infectious condition can no longer be reasonably expected to be transmitted. Disagreement regarding this requirement between the provider and the individual involved shall be resolved by the individual's physician or the local health department.

(b) An employee shall maintain personal cleanliness and conform to hygienic practices while on duty. Hands shall be washed thoroughly before starting work, and as often as may be necessary to remove soil and contamination. An employee shall not resume work after visiting the toilet room without first washing his hands.

(c) A facility shall have lavatories located in or immediately adjacent to toilet rooms.

(d) Food contact surfaces of equipment and utensils used in a facility shall be smooth, free of breaks, open seams, cracks, chips, be accessible for cleaning, and nontoxic.

(e) Eating and drinking utensils shall be cleaned for each usage. Kitchenware, food contact surfaces of equipment, exclusive of cooking surfaces of equipment, and food storage utensils used in preparation or serving of food or drink shall be cleaned after each use. Cooking surfaces of equipment shall be kept clean. Nonfood contact surfaces of equipment shall be cleaned to keep them in a clean and sanitary condition. Single-service articles shall be stored, handled, and dispensed in a sanitary manner, and be used only once.

(f) Effective control measures shall be utilized to minimize the presence of rodents, flies, roaches, and other vermin on the premises.

(g) Openings to the outer air shall be effectively protected against the entrance of the insects by self-closing doors, closed windows, screening, controlled air current, or other effective means.

(h) Floors, walls and ceilings shall be smooth and constructed to be easily cleanable. Walls, windows and ceilings shall be kept clean and in good repair.

(i) Kitchens shall be adequately ventilated to the outside air.

(j) The water supply shall be properly located, protected, adequate, and of a source approved by the local health department. Groundwater supplies for facilities caring for more than twenty-five (25) children shall meet the specifications of the Cabinet for Natural Resources and Environmental Protection. Facilities caring for twenty-five (25) children or less may secure approval from the local health department.

(k) Sewage and solid waste shall be properly disposed of and solid waste shall be kept in suitable receptacles in accordance with local, county and state laws as governed by KRS 211.350 to 211.380. Sewage shall be disposed of by a method approved by the Cabinet for Natural Resources and Environmental Protection or the Cabinet for Human Resources. Consultation shall be sought from the Cabinet for Natural Resources and Environmental Protection or the local sanitarian having jurisdiction over a facility in which the adequacy of the plumbing is questioned.

(l) Each facility shall be provided with adequate and conveniently located toilet and handwashing accommodations.

1. Each toilet shall be kept in clean condition, kept in good repair, be lighted and have ventilation to outside air.

2. A supply of toilet paper shall be available.

3. Lavatories shall have hot and cold running water under pressure which allows washing of hands under warm water.

4. Water temperature at lavatories used for hand washing shall not exceed 110 degrees Fahrenheit.

5. Soap and approved individual cloth or paper towels shall be provided.

6. Easily cleanable, covered waste receptacles shall be available in toilet and handwashing areas.

Section 4. Transportation. (1) There shall be documentation available to indicate conformance to federal and state laws pertaining to vehicles, drivers and insurance as governed by KRS 281.600, 186.020 and Chapters 189 and 189A.

(2) A facility providing or arranging transportation service shall have a written plan and statement of transportation policies and procedures.

(3) Transportation provided by licensed public transportation or school bus shall meet Transportation Cabinet safety inspection requirements.

(4) Requirements for facility-owned vehicles and their usage:

(a) Twelve (12) or more passenger vans and buses shall display a current certification of inspection from the Transportation Cabinet on the designated window.

(b) A vehicle used to transport children, and requiring traffic to stop while loading and unloading children at their various homes along public roads, shall be equipped with a system of signal lamps, identifying colors and words.

(c) A car or van shall be equipped with seat belts for each child to be individually secured.

(d) A vehicle used to transport children shall not carry hazardous materials aboard.

(5) The staff-child ratios set forth in Section 1(1) of this administrative regulation shall apply if not inconsistent under special requirements or exceptions in this section. The maximum number of children under the age of five (5) a driver shall supervise alone is four (4).

(6) Each child shall have a seat and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat.

(7) A vehicle containing children shall not be left unattended.

(8) A child shall not be left unattended at the site of aftercare delivery.

(a) If the parent, or a person designated by the parent to accept the child, is not present upon delivery of the child, a prearranged written plan known to the parties shall designate where the child can be picked up.

(b) If a person other than the designated person is to receive the child, arrangements shall be made by the parent or guardian and documented.

(c) A child shall not be picked up at or delivered to a location which requires crossing the street or highway unless accompanied by an adult.

(9) A vehicle transporting children shall have the headlamps on.

(10) A vehicle shall be refueled when not being used to transport children. If emergency refueling or repair is necessary during transporting, children shall be removed and supervised by an adequate number of adults while refueling or repair is occurring.

(11) The engine shall be turned off, keys removed, and brake set if the driver is not in the driver's seat.

Section 5. Physical Facilities. (1) The building shall be suitable for the purpose intended.

(a) There shall be a minimum of thirty-five (35) square feet of space per child used for play, exclusive of the kitchen, bathroom, hallways, and storage areas. It shall be kept clean and in good repair.

(b) If a portion of the building is used for purposes other than day care, necessary provisions shall be made to avoid interference with the day care program.

(c) The building shall be so constructed that it is dry, adequately heated, ventilated, lighted; that windows, doors, stoves, heaters, furnaces, pipes, and stairs are protected; that screening is provided on windows and doors which are left open.

(d) There shall be a minimum of one (1) toilet and wash basin for each twenty (20) children. In boys' bathrooms urinals may be substituted for up to one-half (1/2) of the number of toilets required. Toilet facilities shall be cleaned and sanitized daily.

(e) The kitchen shall be clean and equipped for the proper preservation, storage, preparation, and serving of food. The kitchen shall not be used for activities of the children.

(f) The facility shall be equipped with a telephone accessible to the rooms used by the children.

(g) If the only food served by the facility is an afternoon snack for the school-age children, a kitchen shall not be required if adequate refrigeration is available.

(h) Indoor areas for infants and toddlers shall be provided separated from areas used by older children. The infants and toddlers may participate in activities with older children for short periods of time.

(i) There shall be adequate crawling space for infants and toddlers protected from older children and away from general traffic patterns of the facility.

(j) A facility shall have lavatories in or immediately adjacent to changing areas used for infants and toddlers.

(k) If a facility provides an outdoor play area for infants and toddlers, the outdoor area shall be shaded and out of the traffic pattern of older children.

(l) The Department of Housing, Buildings and Construction and the State Fire Marshal's Office shall be contacted concerning planned new buildings, additions, or major renovations prior to construction.

(2) Grounds shall be provided as follows:

(a) On-site outdoor play areas shall be fenced for the safety of the children. Outdoor play areas shall be a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section. The area shall be free from litter, glass, rubbish, and flammable materials. The outdoor area shall be safe and drained; or

(b) If a facility does not have access to an outdoor play area, an indoor space shall be used as a play area and have a minimum of sixty (60) square feet per child using the area, separate from and in addition to the thirty-five (35) square feet minimum as described in subsection (1)(a) of this section, and include gross motor equipment and be well-ventilated and heated.

(3) Equipment needed within the facility shall be as follows:

(a) Equipment and furnishings shall be clean and in good repair. There shall be safe play equipment, both indoors and outdoors, to meet the physical and other developmental needs and interests of children of different age groups.

(b) Each facility shall have enough toys, play apparatus, and age-appropriate developmental materials to provide each child with a variety of activities during the day as specified in Section 1 of this administrative regulation. Toys shall be too large to swallow, durable, and without sharp points or edges.

(c) Tables and chairs shall be of suitable size for children.

(d) There shall be storage space in the form of low open shelves accessible to the children.

(e) Individual space for each child's clothing shall be provided.

(f) An individual cot, crib, baby bed or two (2) inch thick mat shall be provided for each child in attendance for more than three and one-half (3 1/2) hours per day. Cribs shall have a firm, comfortable

waterproof mattress. For sanitary reasons, individual sheets and covers shall be provided for each child and shall be laundered as needed. If mats are used, floors shall be free from drafts and dampness. Cots and other equipment and furnishings shall be properly spaced so as to allow free and safe movement by children and adults.

(g) Tiered cribs shall not be used.

(h) Supplies shall be stored so that the adult can reach them without leaving the child unattended.

(i) Chairs shall be provided for staff to use when feeding, holding or playing with children.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: June 4, 1993

FILED WITH LRC: June 7, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1993, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resource Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by July 17, 1993: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: Direct costs to the affected entities may be incurred from the addition of a maximum group size, a change in the staff-child ratios for infants effective July, 1994, additional training requirements for owners and staff, specified requirements for the director of a facility, and school-age care requirements. A change in the licensing of dwelling unit facilities may result in a savings for some child care providers who may require certification rather than licensure.

1. First Year: First year costs to the affected entities may be incurred from the requirement for a maximum group size, changing the staff-child ratios for infants effective July, 1994, increasing training requirements for owners and staff, specifying requirements for the director of a facility, and school-age care requirements. A change in the licensing of dwelling unit facilities may result in a savings for some child care providers who may require certification as a child day care home rather than licensure as a child day care facility.

2. Continuing costs or savings: Continuing costs to the affected entities may be incurred from imposing a maximum group size, changing the staff-child ratios for infants effective July, 1994, increasing training requirements for owners and staff and school-age care requirements. The cabinet will complete a survey of actual day care rates in October, 1993.

3. Additional factors increasing or decreasing costs (note any effects upon competition): For facilities that are also the full-time residence of the licensee, costs will be incurred for criminal records checks and tuberculosis skin tests for all adults living in the home whether or not they are caregivers.

(b) Reporting and paperwork requirements: Additional reporting and paperwork requirements include criminal records check and tuberculosis skin test for all adults living in the home of a licensee if the licensee's residence is the day care facility. The licensee is also required to make available to the public the following: providing for public inspection copies of statements of deficiencies the facility has received from the cabinet, plans of correction for the past three years, court orders pertaining to the quality of care or service provided and copies of children and parent rights pursuant to KRS 199.896.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is a potential reduction in the number of facilities licensed by the Office of the Inspector General. This is due to the statutory change in requiring a license for centers caring for seven or more children rather than four or more children. However, the changes in statutory requirements will result in a potential increase in the number of certified family child care homes to be certified by DSS.

(a) Direct and indirect costs or savings: No additional costs or savings to the cabinet may be incurred, but DSS may have increased responsibilities due to the reduction in the number of licensed facilities and an increase in the number of certified family child care homes.

1. First Year: Same as above.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: The revision in the staff-child ratio effective July, 1994, may increase the costs of day care but should be offset by an increase in the quality of care provided for infants. The effective date of this provision may be revised by administrative regulation to July, 1994, contingent upon the availability of additional federal funds for subsidized child care.

(b) Reporting and paperwork requirements: Some revisions in the survey forms will be required to incorporate changes in the licensing standards regulations.

(3) Assessment of anticipated effect on state and local revenues: The revision in the staff-child ratio effective July, 1994, may increase the costs of day care but should be offset by an increase in the quality of care provided for infants. There will be minimal impact to local government entities that operate a child care facility and minimal impact to state revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the fall of 1990 by CHR Secretary), consisting of day care providers, other child care professionals and cabinet staff assessed various options in promulgating this regulation. Many suggestions regarding the staff-child ratios were received from the Child Care Advisory Council, advocates, providers, cabinet staff, input from the public as a result of the January 22, 1993, Public Hearing, and comments from the hearing held during the Administrative Regulation Review Subcommittee meeting March 2, 1993. The decision was reached to revise the infant ratio effective July, 1994.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 199.896 requires six hours of orientation and at least six hours of annual training for all employees and owners of child care facilities while this regulation requires twelve hours of orientation and child development training and twelve hours of annual training in child development. Additionally this regulation requires a location other than a dwelling unit which regularly receives four or more children unrelated to the provider to be licensed.

(a) Necessity of proposed regulation if in conflict: The Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, quality training in these areas is becoming available statewide at no cost to the provider. A location other than a dwelling unit could have received four to six children unrelated to the provider and not been required to comply with any health and safety standards as established for certified or licensed providers. The cabinet, through this regulation, requires these locations to be licensed.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: With regard to the increased training requirements, the Licensing Standards Committee's recommendation of twelve hours was based on the move nationwide to require additional training for child development, nutrition, health and safety and discipline. Additionally, training in these areas is becoming available statewide at no cost to the provider. The Licensing Standards Committee felt that additional training was necessary to enhance the quality of child care statewide which is the

intent of legislature in KRS 199.892 to 199.896. The cabinet also determined that it was not the intent of the legislature to allow nondwelling unit locations to be used in the care of four to six children unrelated to the provider without meeting health and safety standards.

(6) Any additional information or comments: The cabinet contacted Senator Johns to determine the intent of SB 211 and verify the need to license nondwelling unit locations that care for four to six children unrelated to the provider. The cabinet will complete a survey of actual day care rates in October, 1993. Some increased costs may be offset by a revision in the cabinet's maximum child day care payments effective April, 1994. The revision in the staff-child ratios may result in increased costs to the purchasers of child care services if providers increase their rates to offset additional expenses incurred due to the revised ratios.

TIERING: Was tiering applied? No. Upon adoption of these regulations, licensed day care facilities statewide shall comply with the new provisions of this administrative regulation.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:130. Child care discipline.

RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050, 199.896(2)
NECESSITY AND FUNCTION: KRS 199.896(2) grants authority to the Cabinet for Human Resources to establish administrative regulations and standards for day care for children. The function of this administrative regulation is to set discipline standards for child day care facilities.

Section 1. Discipline in Child Day Care Facilities. Disciplinary methods shall be in writing and implemented through positive guidance to help the individual child develop self-control and assume responsibility for his acts. The facility shall:

(1) Establish simple and consistent rules both for children and staff that set the limits of behavior;

(2) Not subject children to harsh or physical discipline;

(3) Not allow loud, profane, threatening, frightening or abuse language by staff or other persons on the premises; and

(4) Not associate discipline with rest, toileting, or food.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 7, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation will be held on July 22, 1993, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resource Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by July 17, 1993: William K. Moore, Jr.,. Department of Law, Cabinet for Human Resources, 275 East Main Street, 4-West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are between 1200 and 1500 currently licensed child day care facilities.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

1. First year: There are no direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

2. Continuing costs or savings: There are no direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations. The proposed regulations will improve the language of the regulation but does not effect the department's requirements for discipline.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations.

1. First year: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations.

2. Continuing costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations.

3. Additional factors increasing or decreasing costs: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: A Licensing Standards Committee (approved in the fall of 1990 by CHR Secretary), consisting of day care providers and other child care professionals, and cabinet staff assessed various options and this regulation was the final recommendation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(6) Any additional information or comments: This regulation was promulgated to comply with SB 211 and the Child Day Care Bill of Rights which states children have the right to be free from physical or mental abuse and the right not to be subjected to abusive language or abusive punishment. There are no additional information or comments of which we are aware.

TIERING: Is tiering applied? Yes. Upon adoption of these regulations, licensed day care facilities shall comply with new provisions of this regulation upon renewal of their respective license.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the June 7, 1993 Meeting

The June meeting of the Administrative Regulation Review Subcommittee was held on Monday, June 7, 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 May 3, 1993 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Tom Smith, Nick Kafoglis and Gene Huff; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Representative Tom Burch; Representative Bill Lear; Paul P. Borden, Richard Casey, Kentucky Higher Education Assistance Authority; James A. Boling, Kentucky Agricultural Experiment Station; Dan Niffenegger,Wilbur Frye, U.K. Division of Regulatory Services; George Russell, Anita Stanley, Registry of Election Finance; Rene' F. True, Debra H. Eucker, Revenue Cabinet; John Covington, Marilyn Eaton-Thomas, Kentucky Infrastructure Authority; Maurice Turner, Kentucky Workers' Compensation Funding Commission; Larry Perkins, State Board of Registration for Professional Engineers and Land Surveyors; Don C. Paris, John L. Ackman, Jr., Kentucky Appraisers Board; John Phillips, Lauren Schaaf, Thomas A. Young, Kentucky Department of Fish and Wildlife; Tom Hoehner, Mike Herrington, Steve Jones, Marcus L. Wesley, Economic Development Cabinet; Pat Haight, Bruce Williams, James Hale, John E. Hornback, Natural Resources and Environmental Protection; Helen Howard-Hughes, Keith Hardison, Kentucky Parole Board; Brenda Priestly, Jack Damron, Department of Corrections; Sandy Pullen, Transportation Cabinet; Anne Keating, Terry Vance, Akeel Zaheer, Department of Education; Dwayne T. Gatewood, Delmus Murrell, Beverly Haverstock, John Hicks, Workforce Development Cabinet; Carla H. Montgomery, Suetta Dickinson, Kentucky Department of Insurance; Mike Fulkerson, Kentucky Racing Commission; Judith Walden, Deparment of Housing, Buildings and Construction; Gerald Stewart, Larry J. Collier, R. Wayne Jordan, Kentucky Fire Commission; Eric Friedlander, Ked Fitzpatrick, Marion Guarnieri; Jeannie Southworth, Cabinet for Human Resources; Kathryn R. Dutton-Mitchell, Bill Stewart, Protection & Advocacy Division; Barbara Dermody, Kentucky Nurses Association; Alan Phillips, Kentucky Seed Improvement Association; Dennis TeKrony, Department of Agronomy; John Cooper, Kentucky Bankers Association; James Carloss; Kentucky Associaton of Realtors; Thomas Marshall, ChoiceCare; John Crum, Humana, Inc.; T. Allen Woodward, Harold L. Bishchoff, HealthWise of Kentucky; Sam Crawford, Kentucky Farm Bureau; Rusty Osterbrook, Symmons Industries; Sharon Rengers, Kosair Childrens Hospital; Donnie Wilkerson, Wilkerson & Sons Supply; Sylvan Smith; Mary Onley-Linder, Alliant Health System.

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 did not comply with statutory requirements:

Agricultural Experiment Station: Seed

At the request of Chairman Kerr, Subcommittee staff reviewed the memorandum transmitted to Subcommittee members. Subcommittee staff stated that the: (1) agency had agreed to a number of amendments, primarily to incorporate material by reference and to comply with the drafting and format requirements of KRS Chapter 13A, to 12 KAR 1:005; 12 KAR 1:010; 12 KAR 1:025; 12 KAR 1:060; 12 KAR 1:065; 12 KAR 1:075; 12 KAR 1:080; and 12 KAR 1:090; (2) agency was proposing an additional amendment to 12 KAR 1:080, Section 2(4), to include the "Tobacco Seedling Annual Report Form", Section 3, to include "Application For Permit For Out-of-State User To Sell Tobacco Seedlings In Kentucky"; (3) amendments did not address every issue raised by these administrative regulations; and (4) administrative regulations appeared not to comply with statutory authority.

The agency agreed that 12 KAR 1:085 should be repealed because it repeated or summarized KRS Chapter 250, in violation of KRS Chapter 13A.

In response to questions by Subcommittee members, Subcommittee staff explained that, even if the Subcommittee determined that these administrative regulations did not comply with statutory authority, they should be amended because they would not expire until sine die adjournment of the next Regular Session.

Senator Smith asked how it was determined that the seedlings were out-of-state seedlings. Agency personnel stated that they must all be labeled. Senator Smith asked if the fee for inspection was for the reading of the label, and why the state needs to receive a fee from out of state seedlings. Agency personnel stated that the: (1) out-of-state seedlings constituted a major share of seedlings sold, perhaps 50%; (2) fees were needed to pay for enforcement of the law: (3) payment by out of state producers ensured that the cost would not be borne by in-state producers; and (4) the inspection consisted of checking the label.

Senator Smith asked how much money was raised annually from these fees, and how many inspectors there were. Agency personnel stated that about $50,000 would be raised, and that there were four part-time inspectors for a four month period. Senator Smith stated that checking the label would not prove that the seedlings were what they were represented to be, and that he had received a number of complaints over the fees. Agency personnel stated that inspection was required in order to comply with the statutory requirement that the seedlings had been certified. Senator Smith stated that the tag, itself, does not prove that the seeds had been certified or complied with the statute.

Senator Smith asked whether the Kentucky Seed Improvement Association inspected the seedlings in their state of origin. Agency personnel responded that it did not, but that other states were required by law to maintain the same certification standards required in Kentucky, and that inspectors of the state of origin inspected and certified the seedlings.

At the request of Chairman Kerr, Subcommittee staff summarized the issues and reasons upon which the finding of deficiency was based: (1) failure to comply with legislative intent; (2) whether KRS Chapter 250 clearly authorizes delegation of duties to the Association, and the administrative structure, inspections, and fees of the Association and other states; (3) whether the provisions of KRS Chapter 250 explicitly governing only seeds permits the regulation of seedlings or plants; (4) whether tiering was applied, and whether in state producers were subjected to more onerous requirements and charges than those out of state; (5) whether KRS Chapter 250 authorized delegation of duties to other jurisdictions; (6) whether the Association was required to file its own administrative regulations, rather than have its certification standards and requirements incorporated in Agricultural Station administrative regulations.

The Subcommittee approved motions: (1) amending 12 KAR 1:005; 12 KAR 1:010; 12 KAR 1:025; 12 KAR 1:060; 12 KAR 1:065; 12 KAR 1:075; 12 KAR 1:080; and 12 KAR 1:090; and (2) finding 12 KAR 1:005; 12 KAR 1:010; 12 KAR 1:025; 12 KAR 1:055; 12 KAR 1:060; 12 KAR 1:065; 12 KAR 1:075; 12 KAR 1:080; 12 KAR 1:085; and 12 KAR 1:090; 12 KAR 1:095; 12 KAR 1:100; 12 KAR 1:105 did not comply with statutory authority and were deficient.

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 labeling 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.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority: Work Study Program

11 KAR 6:010. KHEAA work study program. Paul Borden, Executive Director, appeared, representing the agency. The administrative regulation was amended to define "KWSP" as the KHEAA Work Study Program.

Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships. A cite in the STATUTORY AUTHORITY line was corrected.

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:050. Conciliation. This administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements, in Section 1(3) and Section 2(3).

32 KAR 2:060. Advisory opinions. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements, in Section 6; and (2) KRS 121.135 which requires the Registry to issue advisory opinions upon request and to make all requests for such issuance public. The Registry agreed to amend this administrative regulation by deleting language which established a "twenty-five dollar ($25.) subscription service" for distribution of advisory opinions. The amendment inserted language which reflects the Open Records Law standard for charging a "reasonable fee" for requesting copies of open records [KRS 61.874].

32 KAR 2:130. Cash contributions, cashier's checks, and money orders. This administrative regulation was amended: (1) to comply with KRS 13A.222(4) drafting requirements, by correcting a typographical error in the NECESSITY AND FUNCTION statement and Section 3; (2) in Section 1 to add language clarifying that 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, as well as "special elections".

32 KAR 2:140. Revocation of exemption forms, reversion rights; August filers. The Registry stated that KRS 121.180(1) permits a candidate to file for an exemption from filing preelection campaign finance reports if he will not raise or spend more than $3,000. in an election, or an exemption from filing any campaign finance reports if he will not raise or spend more than $250. in an election.

Anita Stanley, attorney for the Registry stated, however, that the statute does not address: (1) how a candidate selecting the exemption alternative would be affected by candidate filings in August (which would include municipal offices and persons who elect to run for offices as independents); and (2) what alternatives, if any, a candidate having signed the exemption at a time when their candidacy went unopposed, would have if an independent candidate filed opposing their candidacy in August.

The Registry proposed an amendment to this administrative regulation to address the issue of reversion rights as to the exemption option. A new Section 3 was added that allows a candidate, expecting to run unopposed in the general election who has filed an exemption, to reevaluate the exemption status at the filing deadline in August if a independent candidate should file to oppose such candidacy.

Revenue Cabinet: Department of Administrative Services: Ad Valorem Tax; State Assessment

103 KAR 5:150. Procedures for the removal of a property valuation administrator from office. With regard to funds representing the pro rata tax assessment of the previous owner of property sold within a tax year, Senator Smith asked what would happen if a mortgage company did not pay property taxes from the funds it held in escrow, and how serious a problem this was. He added that notification of failure to pay and lien, in addition to the required newspaper notice, was needed, because the current owner would not be notified since the name of the previous owner would be listed as delinquent.

Agency personnel stated that they would inform the Secretary of Senator Smith's concerns and questions, and include this item in their review of existing statutes.

In response to a question on existing procedures for the removal of a property valuation officer, agency personnel stated that the: (1) procedures basically were those established by this administrative regulation; (2) governing statutes do not establish the details of the procedures for removal; (3) the Secretary has the authority to remove; (4) the authority of the Secretary is established by statute; (5) the Secretary acts on charges brought, or information received; and (6) statutes establish the grounds for charges, including wilful disobedience of an order of the Cabinet.

This administrative regulation was amended as follows: (1) RELATES TO paragraph: to cite the specific statutes to which the administrative regulation relates; (2) STATUTORY AUTHORITY paragraph: to cite the specific statutes authorizing the promulgation of this administrative regulation; (3) Sections 1 through 3: to comply with the format requirements of KRS 13A.220(4), and the drafting and language requirements of KRS 13A.222; and (4) deletion of Section 4 because it repeats or summarizes statutory language, in violation of KRS 13A.120(2)(e),(f).

Finance and Administration Cabinet: Kentucky Infrastructure Authority

200 KAR 17:060. Guidelines for solid waste revolving fund. This administrative regulation was amended to: (1) Insert "KRS 224A.270(1) and (6)" in the NECESSITY AND FUNCTION Section; (2) Renumber Sections 6, 7 and 8 as Sections 5, 6 and 7 pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a); (3) Insert a definition for "Private activity loan"; and (4) Specifically set the interest rate for private and non-private activity loans as 2.75% and 3% over the index of the average of the Bond Buyer's Index of twenty (20) year G.O. Bonds as published weekly in the Bond Buyer financial newspaper.

On August 22 1991, the interim Joint Committee on Appropriations and Revenue: (1) Found 200 KAR 17:020 deficient because the "Kentucky Infrastructure Authority lacked the statutory authority" to determine eligibility for funding pursuant to this loan program; and (2) Determined that the authority for determining eligibility and prioritizing applications for the solid waste revolving fund resides with the Natural Resources and Environmental Protection Cabinet.

401 KAR 49:210 reviewed by the Subcommittee at the same time properly places the authority for determining eligibility and prioritizing applications in the Natural Resources and Environmental Protection Cabinet.

This administrative regulation sets the criteria for evaluating all applications recommended for funding by the Natural Resources and Environmental Protection Cabinet. KRS 224A.270(6) requires the Kentucky Infrastructure Authority to evaluate all applications for financial feasibility, and, permits the Authority to deny applications for funding based upon its evaluation.

Kentucky Workers Compensation Funding Commission

200 KAR 19:010. Payment of audit by taxpayer. This administrative regulation was amended as follows: (1) RELATES TO paragraph: to insert a citation of the specific statute to which this administrative regulation related; (2) STATUTORY AUTHORITY paragraph: to insert a citation of the specific statutes that authorized the promulgation of this administrative regulation; (3) Sections 2 and 3: to reorganize the format of these sections to comply with the format requirements of KRS 13A.220(4); and (4) Section 4: to comply with the language requirements of 13A.222(4)(b), requiring "shall" to express a duty or obligation.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:180. Firm registration. The Regulations Compiler noted for the record that this administrative regulation and 201 KAR 18:190 had also been promulgated as emergency administrative regulations, and that the emergency had expired last week.

Senator Huff asked whether fees had been increased. Agency personnel replied that the fees established by this administrative regulation are not increases but new fees.

This administrative regulation was amended to: (1) incorporate material by reference; (2) comply with the drafting and format requirements of KRS 13A.220(4) and 13A.222; and (3) delete repetitions and summaries of statutory language as required by KRS 13A.120(2)(e).(f); (4) clarify provisions establishing deadlines.

201 KAR 18:190. Continuing education. In response to a question by Representative Yates on the exemption of engineers from continuing education requirements, Subcommittee and agency staff stated that engineers were exempt, and that if a person was licensed as both a land surveyor and an engineer, as a land surveyor he would have to meet the continuing education requirements.

This administrative regulation was amended to: (1) incorporate material by reference; (2) amend the NECESSITY AND FUNCTION paragraph to make it clear that the continuing education requirements apply to land surveyors, and do not apply to engineers; (3) amend the Definitions; (4) clarify requirements; (5) add standards for the approval of continuing education courses; (6) establish the schedule for compliance with continuing education requirements; (7) provide more detail for the standards on registration, courses, experience, and verification; (8) comply with the format and drafting requirements of KRS Chapter 13A.

Kentucky Real Estate Appraisers Board

201 KAR 30:080. Hearings. This administrative regulation was amended by inserting a new subsection (3) to clarify that: "A person who conducted or participated in an investigation of the subject matter of a hearing, shall not serve as a hearing officer.".

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:171. Deer hunting seasons. Tom Young, Lauren Schaaf and John Phillips appeared, representing the Department. This administrative regulation was amended to incorporate by reference the form "Managed Deer Hunt Application Form".

Senator Smith asked why the Wildlife Damage Complaint Report listed coyotes and dogs. Lauren Schaaf stated that coyotes had begun to appear in various parts of the state, and that stray dogs were also a problem. He stated that reporting the incident of damaged by coyotes and dogs gave the Department information to estimate the census of these animals and thus the extent of the problem.

301 KAR 2:211. Deer control tags. This administrative regulation was amended to incorporate by reference the form "Crop Damage Complaint Form". Representative Allen asked about a land owner's right to kill wild animals on his own property. The agency representative stated that the land owner had the right to kill any animal causing harm to people or property any time of the year. He further stated there is a responsibility however, to report that to the Department, so that the Department can know the extent of damage being committed by each species and decide the best methods of control.

Wildlife

301 KAR 4:100. Peabody Wildlife Management Area use requirements and restrictions. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A. Representative Allen asked how the Department got management of this land. The agency representative replied that Peabody Coal Company officials had requested the Fish and Wildlife Department to manage the area. He further stated that through a memorandum agreement the Department is managing 70,000 acres. Representative Allen asked if local taxes were being paid on that land, to which the answer "yes" was given. Discussion of permits brought forth testimony that the Department will issue user fee permits for $10 per individual and group fee permits for a limited event for $25. The Department representative stated that the area is relatively primitive since the Department only manages it and either party can cancel the agreement with 30 days notice.

Economic Development Cabinet: Kentucky Jobs Development Authority

307 KAR 2:010. General operations. This administrative regulation was amended to: (1) Delete Section 3(1)(b), (d) and (e) which repeat provisions of KRS 154.24-090 (2), (3) and (4) and insert the appropriate statutory citations; (2) Add paragraphs (d) through (m) to Section 3(1) to make all information in the application a part of the administrative regulation and to clearly specify the information to be considered by the Authority in approving an application for incentives; (3) Provide in Section 4(1) that a hearing agent shall be appointed to solicit public comment on the proposed incentive package and to provide that the company shall address the criteria contained in KRS 154.24-090 at the public hearing; (4) Delete Section 5 which repeats KRS 154.24-150 and clarify that the Authority shall approve any benefit or in-kind contribution proposed by the local legislative body; (5) Clarify that the Authority may require annual, monthly or quarterly progress reports as a part of the negotiated terms of the Service and Technology agreement pursuant to KRS 154.24-120; (6) Clarify that Section 7(1) requires the Authority to provide a copy of the application form and not the completed application pursuant to Section 7; and (7) Require applicants to pay a $500 application fee.

A question had been raised concerning the authority of the agency to promulgate administrative regulations. Subcommittee staff stated that the Kentucky Jobs Development Authority may promulgate administrative regulations pursuant to KRS 154.24-040(7) without the approval of the Kentucky Economic Development Partnership Board when acting in its capacity as the Kentucky Jobs Development Authority.

KRS 154.24-040(7) specifically grants authority to promulgate administrative regulations to the Kentucky Jobs Development Authority. The board of the Kentucky Economic Development Finance Authority serves as the board for the Kentucky Jobs Development Authority. The Kentucky Economic Development Finance Authority must have its administrative regulations approved by the Kentucky Economic Development Partnership Board, but the Kentucky Jobs Development Authority needs no prior approval pursuant to KRS 154.24-040(7). Therefore, when acting in its capacity as the board of the Kentucky Jobs Development Authority, the board does not need the approval of the Kentucky Economic Partnership Board.

Subcommittee staff pointed out that: (1) There appeared to be no statutory authority for requiring applicants to pay an application fee with the submission of the application; (2) KRS 154.24-040(6) allows the Authority to recover "consultation, advisory, legal fees and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of the service and technology agreement..."; and (3) There is no provision that authorizes the Authority to recover an "application fee".

Cabinet personnel stated that: (1) KRS 154.24-070 permits the Authority to "accept moneys which may be appropriated by the General Assembly, or moneys which may be received from any other source..."; (2) The application is intended to cover on-site inspections of the facility in preparation for approval of the application, preparation of appropriate financial data, documents for the initial approval by the Authority, and any legal questions that may arise in the interim; and (3)The application fee also has the effect of ensuring that only serious applicants will be making applications for incentives.

Subcommittee staff stated that all the costs of preparation of documents and other financial data, as well as legal fees, were intended to be reimbursed as a part of the "Service and Technology Agreement" which is negotiated with the company after the application has been approved.

Chairman Kerr also pointed out that there is a minimum $1,000 or .10% administration fee charged in addition to the application fee. Chairman Kerr asked if the administration fee was spelled out in the statute. Cabinet personnel stated that the specific fees were not spelled out, but that KRS 154.24-070 allowed for the recovery of costs. The formula for the recovery of those costs was determined by the Cabinet and set out in the administrative regulation.

Chairman Kerr asked how much money these fees would generate. Cabinet personnel stated that they had processed thirty (30) applications since the program began, but none of them have been finally approved. Cabinet personnel further stated that the $500 fee was intended to be used during the preapproval phase of the project. The $1,000 administration fee, per million dollars of benefits was intended to be used in the phase of the project after approval, to reimburse the Cabinet for the cost involved in monitoring the approved company. The Cabinet estimated that for the 30 applications filed, the Cabinet might be reimbursed a total of $40,000.

Senator Huff asked what the Budget appropriation was for the Economic Development Cabinet and how many applications the Cabinet was receiving for the jobs development program. Cabinet personnel stated that: (1) the General Assembly made no appropriation for this program; (2) the Cabinet is trying to handle the program with existing staff; and (3) the Cabinet hopes to add one more staff member to help with monitoring the agreements although one (1) more staff member may be insufficient to monitor the program.

Representative Allen asked if this was a successful program. Cabinet personnel stated that the program itself is new, but appears to be very successful in attracting some projects into Kentucky that would not otherwise have located here.

Representative Allen stated he had a problem with the $500 and $1000 fees. Funding is limited throughout state government and the fee increases throughout state must be stopped somewhere.

Senator Smith asked what kind of companies use this jobs program. Cabinet personnel stated that jobs development programs are used primarily by: (1) corporate headquarters; (2) data processing centers; and (3) some distribution centers.

If a company is nonmanufacturing, nonretail, but moves its data processing function or headquarters to this state, the company could qualify for the program..

In response to a question from Senator Smith, Cabinet personnel stated that a company must do at least 75% of its business out of state to qualify for the Jobs Development Program.

Senator Smith pointed out that the company who is asked to pay an initial fee will receive a tax incentive that will more than make up for the fees charged.

Kentucky Industrial Revitalization Authority

307 KAR 3:010. General operations. This administrative regulation was amended to: (1) Delete Section 3(2) in its entirety and insert a new Section 3(2) which specifically sets out the criteria to be contained in the application and which is to be reviewed when determining which companies will be approved for funding; (2) Provide in Section 4(1) that a hearing agent shall be appointed to solicit public comment on the proposed incentive package and to provide that the consultant hired pursuant to KRS 154.26-080 address the criteria contained in KRS 154.26-080 at the public hearing; (3) Clarify that the Authority may require annual, monthly or quarterly progress reports as a part of the negotiated terms of the Revitalization agreement pursuant to KRS 154.26-090; (4) Clarify that Section 6(2) requires the Authority to provide a copy of the application form and not the completed applications of companies pursuant to Section 6; and (5) Require applicants to pay a $500 application fee.

A question had been raised concerning the authority of the agency to promulgate administrative regulations. Subcommittee staff has stated that the Kentucky Industrial Revitalization Authority may promulgate administrative regulations pursuant to KRS 154.26-030(5) without the approval of the Kentucky Economic Development Partnership Board when acting in its capacity as the Kentucky Industrial Revitalization Authority.

KRS 154.26-030(5) specifically grants authority to promulgate administrative regulations to the Kentucky Industrial Revitalization Authority. The board of the Kentucky Economic Development Finance Authority serves as the board for the Kentucky Industrial Revitalization Authority. The Kentucky Economic Development Finance Authority must have its administrative regulations approved by the Kentucky Economic Development Partnership Board, but the Kentucky Industrial Revitalization Authority needs no prior approval pursuant to KRS 154.26-030(5). Therefore, when acting in its capacity as the board of the Kentucky Industrial Revitalization Authority, the board does not need the approval of the Kentucky Economic Partnership Board.

Subcommittee staff pointed out that: (1) there appeared to be no statutory authority for requiring applicants to pay an application fee with the submission of the application; (2) KRS 154.26-030(14) allows the Authority to recover "consultation, advisory, legal fees and other expenses necessary or incident to the preparation, adoption, implementation, and enforcement of the terms of the service and technology agreement..."; and (3) There is no provision that authorizes the Authority to recover an "application fee".

Cabinet personnel stated that KRS 154.26-060 permits the Authority to "accept moneys which may be appropriated by the General Assembly, or moneys which may be received from any other source...". Chairman Kerr stated that the he did not believe KRS 154.26-060 authorized the Authority to charge a $500 application fee but said he had no objection to the fee.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Solid Waste Planning

401 KAR 49:210. Solid waste revolving fund. This administrative regulation was amended to: (1) Properly cite KRS 224A.270 in the STATUTORY AUTHORITY Section; (2) Provide that applications shall be prioritized pursuant to "KRS 224A.270(7) and Section 2" of this administrative regulation; and (3) Delete the language in Section 4 which required the Cabinet to use a scoring system for evaluation of applications for funding.

Department of Corrections: Kentucky Parole Board

501 KAR 1:040. Conducting parole revocation hearings. This administrative regulation was amended to: (1) Change "are", "must", and "will" to "shall" and "shall be" pursuant to KRS 13A.222(4)(b); and (2) Delete the provision in Section 1(4) that permitted telephonic parole revocation hearings since the provision would violate the open meetings law.

Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory. This administrative regulation was amended to add "KRS 196.245" to the reference section of KSR 15-00-09.

501 KAR 6:040. Kentucky State Penitentiary. This administrative regulation was amended to: (1) Add "KRS 196.245 to the reference section of KSR 16-01-01; and (2) Change "is" to "shall be" in KSR 16-01-01, Page 6,1b pursuant to KRS 13A.222(4)(b).

501 KAR 6:070. Kentucky Correctional Institution for Women. This administrative regulation was amended to add KRS 196.245 to the reference section of KCIW 11-04-01.

501 KAR 6:110. Roederer Correctional Complex. This administrative regulation was amended to delete the reference to a Mass Casualty Plan since the plan is contained in Policy RCC 13-06-03.

Education, Arts and Humanities Cabinet: Department of Education: Office of Chief State School Officer

701 KAR 5:070. Criteria for Commonwealth Institute for teachers. The Subcommittee and agency agreed to a grammatical amendment to restore the word "and".

Office of Learning Support Services

704 KAR 4:020. Comprehensive school health. The Subcommittee and agency agreed to certain amendments to comply with the drafting provisions of KRS Chapter 13A.

Education Professional Standards Board

704 KAR 20:198. Director of special education. This administrative regulation was amended to comply with drafting provisions of KRS Chapter 13A.

Workforce Development Cabinet: Department for Adult and Technical Education: Personnel System for Certified and Equivalent Employees

780 KAR 3:040. Special appointments. Beverly Haverstock, Legal Counsel, appeared, representing the Board. The Subcommittee agreed to delete in its entirety the last sentence in Section 4 relating to the Commissioner developing guidelines setting the number of hours which may be worked in the part time position. As amended now the last two sentences of Section 4 are deleted. Both sentences deleted address salary issues, which are governed by the salary schedule.

Department of Insurance: 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. Sue Etta Dickinson, General Counsel, appeared, representing the agency. Amendments to comply with the requirements of KRS Chapter 13A and to correct typographical errors were requested by the agency and approved by the Subcommittee. Following this routine amendment, extensive discussion of the substantive matter of the regulation began.

Dr. T. Allen Woodward, Medical Director for Health Wise, addressed the administrative regulation and proposed an amendment. Dr. Woodward distributed written testimony and gave oral testimony. He stated that he had a problem with Section 5 of the administrative regulation, saying "we do not see language relating to the requirement of medical necessity" for the coverage of temporomandibular joint disorder". He emphasized that his rationale for this concern is the potential cost of the procedure, stating that some 3,300 procedures per year, averaging conservatively $10,000 per case could require $33 million expended in Kentucky per year for this procedure. He stated that many of these procedures are done for cosmetic purposes. Dr. Woodward proposed that the paragraph under Section 5 be changed to the following wording "Request for prior approval of payment and/or claims for payment related to cranio-mandibular (orthognathic) surgery shall contain evidence of the functional impairment (non-dental in nature) that is caused by the cranio-mandibular disorder. Further, evidence shall be submitted that orthognathic surgery is the appropriate treatment in place of non-invasive forms of treatment.

Ms. Dickinson spoke for the agency and stated that the amendment is complex and the Department is not in favor of the amendment.

Representative Bill Lear spoke in opposition to the proposed amendment. He stated that while most companies have followed the intent of the legislation, two or three have not. He said that if this amendment is adopted, it will introduce subjectivity back into the process.

Harold Bischoff, Executive Director for Health Wise, stated that HMO's in this state don't exclude preexisting conditions, and Dr. Woodward again emphasized a lot of cases are for cosmetic purposes.

After several questions by members of the Subcommittee, Representative Bruce asked for a ruling on the proposition "if a Department doesn't accept a proposed amendment what can the Subcommittee do?" Chairman Kerr asked Ms. Dickinson for her response, to which she replied "the Department does not accept this amendment". Ms. Dickinson further commented "I think the regulation has safeguards to guard against broad coverage for cosmetic purposes".

The Chairman ruled that the Subcommittee could not amend a regulation when the agency was unwilling to accept it. This regulation, as amended by the Department to comply with the drafting requirements of KRS Chapter 13A was approved without objection.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:009. Jockeys and apprentices. This administrative regulation was amended to: (1) Insert "KRS 230.260" in the STATUTORY AUTHORITY Section; (2) Insert the appropriate licensee subject to this administrative regulation in Section 1(1); (3) Set criteria for determining sufficient horsemanship in Section 1(2); (3) Set specific criteria a steward may look to when determining to grant a probationary mount; (4) Set criteria for approval of a contract between an apprentice jockey and a licensed owner or trainer; (5) Delete the words "thereto", "provided however", "thereof", "thereon" and "in such case" pursuant to KRS 13A.222(4)(c).

Senator Kafoglis asked how the term "sufficient horsemanship" had been defined. Cabinet personnel stated that criteria had been set for determining sufficient horsemanship and that pursuant to Section 1(3), the stewards are to determine sufficient horsemanship by looking at the jockeys ability to "control the animal while mounting, riding, and dismounting in race and nonrace conditions."

Senator Kafoglis also asked if there were other safety standards for jockeys. Cabinet personnel stated that the only safety standard imposed by this administrative regulation was to require all jockeys to wear a safety jacket. Cabinet personnel stated that these jackets are not currently available, so the administrative regulation requires that the jockeys wear the safety jacket by 1994.

Representative Yates asked who would pay for the safety jacket. Cabinet personnel stated that the jockey would be responsible for purchasing the jacket although that is not specifically addressed in the administrative regulation.

Harness Racing

811 KAR 1:070. Licensing; owners, drivers, trainers, grooms, and agents. This administrative regulation was amended to: (1) Delete "and agents" from the title and the NECESSITY AND FUNCTION Section since there are no requirements for "agents" in this administrative regulation; (2) Cite "KRS 230.310"and delete all other statutory citations in the RELATES TO and STATUTORY AUTHORITY section; (3) Delete "hereinafter", "such" and "and/or" pursuant to KRS 13A.222(4)(c); (4) Delete the requirement that an applicant show "good moral character" and require that he comply with the provisions of KRS 335B; (5) Require that an applicant for a trainer's license meet the requirements of 811 KAR 1:085 Sections 1,2,3,5,and 14 and 811 KAR 1:090 Section 6; and (6) Incorporate the application forms by reference, pursuant to KRS 13A.110.

This administrative regulation authorizes the Commission to levy a fine against licensees in lieu of suspension or revocation of a license. Subcommittee staff pointed out that there was no statutory authority for the Commission to levy a fine against a jockey.

Chairman Kerr asked if the fines were addressed in the Budget Memorandum. Cabinet personnel stated that the fines were implemented to provide a measure of discipline of jockeys that is short of

a suspension or revocation. Fines are issued for minor infractions. These fines have been an integral part of the former Thoroughbred Commission and the Harness Commission budget. The fine provisions have also been a part of administrative regulations dealing with thoroughbred and harness horses. Both the Administrative Regulation Review Subcommittee and the Business Organizations and Professions subcommittee have reviewed administrative regulations in the past that contained fine provisions. The language concerning the fines has never been questioned. The fines themselves have been deposited into state accounts and have been reported to both the Executive and Legislative branches of government. The fines therefore are a part of the appropriation to the Commission.

In response to a question from staff, Cabinet personnel stated that the fines are not specifically mentioned in the budget memorandum but they are a part of the proposed budget submitted to the administration for passage by the General Assembly.

The subcommittee moved that LRC refer the issue of the Commission's authority to fine a jockey in lieu of suspension or revocation to the appropriate standing committee for possible legislation in the next regular session of the General Assembly.

Department of Housing Buildings and Construction Agency personnel stated that she had researched the issue raised by the Racing Commission administrative regulations relating to the authority of an administrative body to administer fines. She stated that: (1) her research established that an administrative body that had the ultimate authority to take away a licensee's right to engage in the business for which he was licensed could exercise the lesser authority to fine the licensee in lieu of the loss of the licensee's livelihood; (2) while it would preferable to have the authority to fine specifically authorized by statute, if a statute were written sufficiently general, an administrative body would have authority to impose fines in lieu of suspension or revocation.

Chairman Kerr asked for a copy of the research memorandum to be forwarded to Subcommittee staff.

Local Fire Departments

815 KAR 45:100. Volunteer fire department loan fund. Judith Walden, General Counsel, appeared, representing the agency. The administrative regulation was amended to include the address and hours of business of the agency for the availability of material incorporated by reference.

Cabinet for Human Resources: Department for Health Services: Department for Medicaid Services

907 KAR 1:016. Psychiatric hospital services. This administrative regulation was amended to comply with: (1) KRS 13A.222(4) drafting requirements, in Section 2, Line 2 and 5, by deleting the word "is" and inserting the word "shall" and deleting the word "cannot" and inserting the words "shall not"; and (2) KRS 13A.220(4) format requirements to format a large body of text in Section 4.

Representative Thomas J. Burch testified in support of the staff amendment, and he raised additional concerns that the criteria for admission established in this administrative regulation should be amended to include Psychiatric Residential Treatment Facilities, [hereinafter PRTFs].

Rep. Burch discussed House Bill 554, that he had introduced iduringthe 1992 General Assembly, to govern PRTFs, for emotionally disturbed children. He explained that: (1) this legislation embodied the philosophy that such facilities should be small, community-based and home-like"; (2) A PRTF was designed to meet the needs of kids that are somewhere in the middle between needing to be in a psychiatric hospital and a group home; and (3) the legislation passed the House and the Senate by an overwhelming majority and represented a legislative endeavor to provide comprehensive legislation relating to PRTFs.

Rep. Burch recommended that the incorporation by reference materials, [Placement Review Guidelines - Criteria for Admission to and Continued Stay in a Kentucky Medicaid (Under 21) Psychiatric Hospital], be amended to add PRTFs as a lesser restrictive alternative, for child placement, than placement in a psychiatric hospital.

He stated that a child who has been placed in a psychiatric hospital, often suffers a burden and stigma from such placement and requested that the Subcommittee amend the administrative regulation to include the PRTF as a lesser restrictive alternative to be considered before placement in a psychiatric hospital.

Rep. Burch added that representatives from Public Advocacy offered comments at the public hearing concerning this issue and recommended to the Cabinet that the incorporation by reference materials, [Placement Review Guidelines - Criteria for Admission to and Continued Stay in a Kentucky Medicaid (Under 21) Psychiatric Hospital], be amended to show PRTF care as a lower level of care that would preclude hospitalization. He read the Cabinet's response in the Statement of Consideration that "The Cabinet does not at this time believe PRTF care can be considered a lower level of care. Accordingly, the Cabinet declines to make the requested change."

Rep. Burch stated that PRTFs, in practice, are already being considered as a lower level of care. He reiterated the legislative intent of HB 554 was to utilize PRTF as a preferable, and less expensive means of care for children with psychiatric problems, than placement in a psychiatric hospital.

Cabinet representative, Ked Fitzpatrick, responded that the Cabinet disagreed initially with the suggested amendment to add PRTFs to the criteria list because that agency does not view PRTFs as a "lower" level of care, but simply an alternative to hospitalization. Therefore, Mr. Fitzpatrick explained it would be inappropriate to amend the "Criteria for Admission" to include PRTFs as one of several items to be considered as a lower level of care.

At the Subcommittee's request, further discussion of the administrative regulation was suspended until an amendment could be agreed upon by Rep. Burch, Ked Fitzpatrick and representatives from Public Advocacy.

Parties offered amendment for the Subcommittee's consideration which inserted: (1) in Section I of the Placement Review Guidelines - Criteria for Admission to and Continued Stay in a Kentucky Medicaid (Under 21) Psychiatric Hospital, introductory language after Section I as follows: "REQUIREMENTS A, B, C AND D SHALL BE MET FOR ADMISSION TO A PSYCHIATRIC HOSPITAL"; and (2) a new subsection D was in Section I as follows: "D. When determining whether a placement shall be made in a hospital, a PRTF shall be considered a less restrictive potential alternative."

The Subcommittee approved the amendment.

Department for Mental Health and Mental Retardation Services: Substance Abuse

908 KAR 1:310. Administrative procedures for DUI facilities and programs. This administrative regulation was amended to divide sections into subsections, paragraphs, and subparagraphs pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust

11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund.

Kentucky Real Estate Appraisers Board

201 KAR 30:010. Definitions for 201 KAR Chapter 30.

201 KAR 30:020. Licensed nonfederal real property appraiser.

201 KAR 30:030. Types of appraisers required in federally related transactions; certification and licensure.

201 KAR 30:040. Standards of practice administrative regulations.

201 KAR 30:050. Examination, education and experience requirement.

201 KAR 30:060. Fees administrative regulation.
201 KAR 30:070. Prehearing procedure.
201 KAR 30:090. Repeal of administrative regulations.

Transportation Cabinet: Department of Highways: Traffic
603 KAR 5:050. Uniform traffic control devices.

Education, Arts and Humanities Cabinet: Department of Education: Office of Learning Instruction
704 KAR 3:303. Required program of studies.

Department of Insurance: Authorization of Insurance and General Requirements
806 KAR 3:150. Standards for insurers deemed to be in hazardous financial condition.
806 KAR 3:180. Instructions for insurer financial statements.

Department of Housing, Buildings and Construction: Plumbing
815 KAR 20:020. Parts or materials list.
815 KAR 20:120. Water supply and distribution. Donnie Wilkerson, Rusty Osterbrook (representing Simmons Industry, a manufacturer of the device), Sharon Ringer (RN Kosair Children's Hosp, Burn Center, 6 years with Burn Prevention Program) appeared before the Subcommittee.

Ms. Ringer stated that: (1) annually, over 200 children were admitted for tap water scalds; (2) victims included those over 65, and the physically and mentally disadvantaged; (3) scalding of children occurred because they were unattended and because most people were unaware of the temperature that could cause scalding; (4) most people erroneously believe 140 degrees was the minimum temperature that would scald, and did not know how to control the water temperature setting of water heaters; (5) 120 degrees or the "warm" setting should be used; even when set on warm, temperature could be 130 degrees or more; (7) education, alone, would not prevent scalding.

Rep Kerr asked how many cases of children being scalded occurred in Kentucky, how many could be prevented with the device, and whether deaths from scalding had occurred. Ms. Ringer replied that: (1) approximately 200 children suffered scalding; (2) most scalds could be prevented by the device; (3) only a few of the cases were due to child abuse; (4) most social service workers are aware that scalding will occur at 120 degrees; and (5) she had taken ten children to the morgue since 1975.

Sen Smith and Representative Allen asked whether bathtub scalding would be prevented by the device, since most children take or are given baths rather than showers. Senator Smith asked whether the elderly who suffered scald burns were primarily nursing home or motel residents. Agency personnel stated the device would not prevent bathtub or intentional scalding, and Ms. Ringer agreed that children were primarily scalded while taking baths, and stated that the requirement of the device was appropriate even if it prevented only scalding related to showers.

Representative Allen asked whether parents were not checking the water temperature. Ms. Ringer stated that parents either do not check the temperature, or are draw the bath and are absent when the children enter the tub. Representative Allen wondered whether protective devices against every hazard would be required.

Representative Yates asked agency personnel whether the device would be required only in new construction, and the amount of additional cost to construction. Agency personnel replied that the device would be required only in new construction, and that the added construction cost would amount to between $6 and $15, unless one wanted a fancier faucet.

Senator Huff asked how many of the 200 child scald cases were intentional, and whether there was an inquiry on the report of a scald. Ms. Ringer replied that: (1) she did not know how many were accidental or intentional; (2) a scald burn was reported for investigation; and (3) a very small portion of the ones she was familiar with were intentional.

Mr. Osterbrook stated that: (1) the wording of the administrative regulation would include a bathtub because it includes shower-bath combinations; (2) injuries result from an attempt to get away from water that suddenly has become scalding because of falling pressure; (3) currently, hotels and motels are required to have protective devices, nursing homes are regulated by the Cabinet for Human Resources which requires the devices; (4) the cost of the devices would not exceed $15-$20, and that the list price is not the cost because of the great amount of competition in the industry; (5) two-thirds of scalding incidents occurs in the home, not in nursing homes or hotels.

Representative Allen asked whether the maximum temperature of a water heater was established by administrative regulation? Mr. Osterbrook replied that it was 130 degrees, and that some manufacturers of dishwashers recommend 140 degrees, which made it more dangerous. Representative Allen asked Mr. Osterbrook if his company would be benefited by increased sales due to this administrative regulation. Mr. Osterbrook said his company would sell more, but was one of a number of suppliers and smaller than most.

In response to a question from Chairman Kerr, agency personnel stated that the device would be required for new houses or bathroom additions to existing houses, and that farmsteads were exempted.

Agency personnel stated that the agency had not invited those appearing before the Subcommittee and that their views were their own. Chairman Kerr responded that the agency was free to invite anyone it chose to testify at a Subcommittee meeting.

Mr. Wilkerson stated that: (1) he and his company were concerned about the safety of children and the elderly; (2) he sold the devices, which were relatively inexpensive; (3) devices for shower heads were available; (4) the main problem was with tap water, not shower heads; (4) all potential dangers could not be regulated, and that individual, parental, responsibility was an important factor; and (5) the cost would average $35, rather than $15; (6) the administrative regulation would make most of the currently sold tub and shower faucets illegal.

Senator Huff asked whether Section 11 would include bathtubs, and whether most new installations were shower-tub combinations. Agency personnel replied that it would include shower and bath combinations, but it would not include only a tub fixture, and could not state whether most new installations were shower-tub combinations.

Agency personnel stated that the Board had been informed of Subcommittee members' comments and objections and had determined not to amend the administrative regulation.

Senator Smith noted that, even with the device, the temperature could be set to a temperature that could cause scalding, and asked whether scalding were not a problem in rural communities. Agency personnel stated that farmsteads were not governed by this administrative regulation because of the farmstead exemption, and that legislation requiring farmsteads to meet the plumbing code had been defeated.

Representative Allen asked whether the Department of Health or rural water systems could enforce the plumbing code, and stated that in some areas in which new water lines were being installed, farmers were being required to meet the plumbing code. Agency personnel stated that: (1) the Department of Health does not enforce the plumbing code; (2) rural water systems could require compliance with the state plumbing code for hookup, in order to prevent pollution of the public water supply system; and (3) they were unaware of the regulation by such systems of septic tanks or the authority for it. Representative Allen stated that he believed this administrative regulation would permit imposition of the requirement for installation of the device in farmsteads.

In response to a question by Chairman Kerr as to the proportion of children from rural areas of the 200 scald victims, Ms. Ringer stated that she did not have that figure.

Senator Kafoglis stated that while the primary reason for opposition to this administrative regulation appeared to be the cost of the device, the cost was modest and a small percentage of the cost of a new home; most people would not know whether the devices were installed or not; government had responsibility to insure that a product be as safe as reasonably possible; while all accidents could not be prevented, if the cost of a device was relatively modest, the cost is outweighed by the protection to children and the elderly. He added that manufacturers would have such products available.

The Subcommittee approved a motion by Representative Yates to approve this administrative regulation.

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:073. Clinics: ambulatory care. Ms. Smith, representing Alliant Health System, stated that: (1) Alliant objected only to Section 3(3)(a)2., requiring for a registered nurse at the immediate care centers; (2) this would not improve quality, but would increase costs; (3) to require a registered nurse in addition to the doctor and medical assistant on site at all times, would increase the annual cost to Alliant by $127,000; (4) Section 3 be amended to require that a registered nurse to be on call, rather than on site; or that ambulatory care centers owned by hospitals be exempted from the registered nurse on site requirement of Section 3; (5) the requirement for a doctor and medical assistant to be on cite was sufficient; (6) the type of services offered at immediate care centers were not for treatment of chronic condition, and cost patients less than emergency room services.

In response to a question by Senator Kafoglis, Ms. Smith stated that: (1) a doctor was always on site; (2) a registered nurse was not needed; (3) because certain services, such as x-rays, could be performed by medical assistants but not by registered nurses, an on-site medical assistant still would be required even if a registered nurse was required.

Ms. Dermody, representing the Kentucky Nurses Association, stated that: (1) the Association agreed with the requirement of an on-site registered nurse; (2) that the presence of a registered nurse was vital because of the comprehensive medical service offered by an ambulatory care center, such as elderly and child patients, minor trauma, patient triage, education such as is given diabetics, answering medical inquiries over the telephone, chronic illness management, phlebotomy procedures, the drawing of blood; and (3) the requirement of a registered nurse was as necessary at ambulatory care centers as it was in rural health centers and primary centers, in which facilities an on-site registered nurse is required.

In response to a question by Senator Huff, agency personnel stated that there were about 10 immediate care centers licensed in Kentucky, and that he believed only Alliant had requested exemption from the on-site registered nurse requirement.

Agency personnel stated that the agency: (1) had agreed to delete the on-site requirement when this administrative regulation was previously considered by the Subcommittee; (2) the deletion of the requirement was objected to by the Interim Joint Committee on Health and Welfare when it found the administrative regulation deficient, because the Committee believed that, without the requirement, quality of care would be adversely affected; and, (3) the requirement was added to cure the deficiency found by the Committee.

Ms. Smith stated that Alliant: (1) had operated without a registered nurse on-site under the provisions of the previous administrative regulation, and did not believe that quality had been adversely affected; and (2) has a registered nurse trained as a clinical nurse specialist on call for all centers.

Ms. Dermody stated that an illustration of the need for an on-site registered nurse is an ambulatory care center whose personnel told her that a significantly ill patient had been given necessary medical treatment by the registered nurse on call, under the protocol developed with a physician, which could not have been given by a medical assistant.

Senator Kafoglis asked whether the on-site registered nurse requirement was considered a high priority by the Cabinet, in light of its having promulgated administrative regulations, or having agreed to amendments, with the requirement imposed and the requirement deleted. Agency personnel stated that the Cabinet's priority was to have an administrative regulation and, for that reason, had imposed the requirement in order to meet the objections of the Health and Welfare Committee.

Senator Kafoglis noted the shortage of registered nurses and asked why one was needed since an on site doctor was required. Ms, Dermody stated that there was an adequate supply of registered nurses.

Senator Kafoglis stated that, while the Cabinet appeared to have the statutory authority to impose the requirement, he felt it was unnecessary and would increase costs unnecessarily. Agency personnel stated that it did not appear that costs decreased when the requirement had been deleted. In response to his question concerning the KRS Chapter 13A requirements for curing a deficiency, Subcommittee staff stated that: (1) compliance with the determination of one legislative subcommittee could result in a finding of deficiency by another legislative subcommittee; and (2) the determination of one legislative subcommittee was relevant to another if the latter chose to consider it.

In response to questions by Chairman Kerr: (1) Ms. Smith stated that she did not know what the cost of a registered nurse on call would be; and (2) Ms. Dermody stated that a compromise could be reached by requiring either a physician or an advanced registered nurse practitioner be on-site, since: (a) an advanced registered nurse practitioner could function under protocols developed with a doctor, such as the protocols relating to prescriptions; (b) an advanced registered nurse practitioner more advanced training than a registered nurse; and (c) requiring an advanced registered nurse practitioner, rather than a registered nurse, as an alternative to an on-site doctor would reduce the cost. Agency personnel stated that an advanced registered nurse practitioner does not have prescription authority, and the absence of a doctor would mean there was no one on-site with prescription authority.

In response to a question by Senator Kafoglis, agency personnel stated that the compromise proposal could result in illegally permitting an advanced registered nurse practitioner to manage a patient without physician participation.

A motion to approve this administrative regulation failed. Chairman Kerr stated that: (1) the failure of this motion did not result in a finding that the administrative regulation was deficient; and (2) approval of a motion to find the administrative regulation deficient was required for a finding of deficiency.

Senator Smith asked if the use of a physician's assistant, or giving more authority to a nurse practitioner, would not lower costs.

In response to a request by Senator Kafoglis that the Cabinet defer this administrative regulation, agency personnel stated that the administrative regulation was needed and deferral would not result in a change or agreement among parties.

In response to a question by Chairman Kerr relating to prescription protocols, it was pointed out that the protocols could be used in routine cases but not in cases not covered by a protocol, and that in the latter cases could result in the practice of medicine without a license by a nurse.

A motion to find this administrative regulation deficient failed.

Department for Medicaid Services

907 KAR 1:505. Psychiatric residential treatment facility services.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulation was deferred to the July meeting upon agreement by the promulgating agency and

the Subcommittee:

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:150. Three judge panel; appointment; procedure.

The following administrative regulations were withdrawn by the promulgating agency:

Department of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:120. Permanent committees; disposition of unexpended funds upon termination. Agency personnel stated that this administrative regulation was promulgated by the Registry because it was concerned whether KRS 121.180(10) gave the Registry authority to regulate a PAC's unexpended monies upon termination.

Subcommittee staff advised members of the Subcommittee that KRS 121.180(10) established a mechanism for the disposition of unexpended, unobligated funds by a "candidate or committee". The term "committee" includes PACs in the definition established in KRS 121.015(3).

The Subcommittee agreed that the statutory definition for "committee" included PACs, and the mechanism for disposition of unexpended funds established in KRS 121.180(10) would therefore apply equally to PACs. The Subcommittee accepted the Registry's withdrawal of this administrative regulation.

Workforce Development Cabinet: Department for Adult and Technical Education: Adult Education

780 KAR 9:020. High school equivalency diploma.

OTHER BUSINESS

Withdrawal of 200 KAR 19:020 (Kentucky Workers' Compensation Funding Commission). Chairman Kerr: (1) stated that 200 KAR 19:010, governing charges for insurance premiums with a deductible had been withdrawn; (2) the Funding Commission may be imposing its requirements by memorandum, which violates KRS Chapter 13A; and (3) made a motion to request the Funding Commission to appear before the Subcommittee to discuss the matter.

The Subcommittee approved the motion.

The Subcommittee adjourned at 3:30 p.m. until July 2, 1993 at 8 a.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 April 21, 1993

The Interim Joint Committee on Health and Welfare met on Wednesday, April 21, 1993, and submit this report:

The Committee took no action on the following LRC referred administrative regulations: 201 KAR 29:050, 902 KAR 55:090, 902 KAR 100:040, 904 KAR 2:006, 904 KAR 2:111, 904 KAR 2:370, 904 KAR 3:060, 905 KAR 6:060, 905 KAR 6:070, 905 KAR 8:090, 907 KAR 1:025 & E, 907 KAR 1:028 & E, 907 KAR 1:029 & E, 907 KAR 1:061 & E, 907 KAR 1:376, 907 KAR 1:414, 908 KAR 2:040, 908 KAR 3:110, and 908 KAR 3:180.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of May 26, 1993

The Interim Joint Committee on Transportation met on Wednesday, May 26, 1993, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A: 603 KAR 5:070 - Motor vehicle dimension limits; 605 KAR 1:130 - Procedures before Motor Vehicle Commission.

The Committee adjourned at 2:50 p.m.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of June 11, 1993

The Interim Joint Committee on Business Organizations and Professions met on Friday, June 11, 1993, and submits this report:

The Interim Joint Committee on Business Organizations and Professions approved 201 KAR 27:012, promulgated by the Kentucky Athletic Commission, with the following amendment:

By deleting Section 7 in its entirety and inserting in lieu thereof the following:

Section 7. (1) In the conduct of a wrestling match, a contestant shall:
(a) Use only legitimate holds or methods known to wrestling;
(b) Refrain from grasping or hanging onto clothing, ring or ropes for support or to gain a competitive advantage; or
(c) Break within a count of three (3), when ordered to do so by the referee.
(2) Any violation of the provisions of subsection (1) of this section may result in disqualification of a contestant, at the discretion of the referee. Flagrant violation which results in injury to another contestant may result in suspension or revocation of a contestant's license, at the discretion of the commission.

The Committee adjourned at 11 a.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates A2

The Locator Index lists all regulations published in VOLUME 20 of the Administrative Register from July, 1993 through June, 1994. 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 19 are those regulations that were originally published in the Volume 19 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1993 bound Volumes were published.

KRS Index A7

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 20 of the Administrative Register.

Subject Index A9

The Subject Index is a general index of regulations published in VOLUME 20 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	19 Ky.R Page No.	Effective Date
9 KAR 1:010E	2375	3-17-93
Replaced	2611	6-7-93
9 KAR 1:020E	2375	3-17-93
Replaced	2611	6-7-93
9 KAR 1:030E	2375	3-17-93
Replaced	2349	6-7-93
103 KAR 5:150	2376	3-26-93
200 KAR 6:045E	2001	1-26-93
Replaced	2614	6-7-93
201 KAR 2:105E	862	8-18-92
302 KAR 20:040E	2596	4-30-93
Expires		9-29-93
302 KAR 20:054E	2599	4-15-93
302 KAR 20:055E	2600	4-30-93
Expires		9-29-93
302 KAR 20:065E	2602	4-30-93
Expires		9-29-93
302 KAR 20:070E	2604	4-30-93
Expires		9-29-93
307 KAR 2:010E	2607	4-15-93
307 KAR 3:010E	2609	4-15-93
501 KAR 6:090E	2377	3-26-93
Replaced	2304	6-7-93
501 KAR 6:110E	2378	3-26-93
806 KAR 3:150E	2380	4-15-93
806 KAR 3:180E	2381	4-15-93
810 KAR 1:030E	1730	12-29-92
Replaced	2651	6-7-93
903 KAR 5:290E	2381	3-27-93
Replaced	2337	6-7-93
907 KAR 1:013E	2382	3-31-93
907 KAR 1:016E	2385	3-26-93
907 KAR 1:031E	2012	1-21-93
Replaced	2148	6-7-93
907 KAR 1:505E	2386	3-25-93
907 KAR 1:512E	2387	3-26-93
Replaced	2653	6-7-93

ORDINARY REGULATIONS:

Regulation Number	19 Ky.R Page No.	Effective Date
9 KAR 1:010	2348	
As Amended	2611	6-7-93
9 KAR 1:020	2348	
As Amended	2611	6-7-93
9 KAR 1:030	2349	6-7-93
11 KAR 3:100		
Amended	2475	
11 KAR 6:010		
Amended	2478	(See 20 Ky.R.)
11 KAR 8:030		
Amended	2480	
11 KAR 12:070		
Amended	2482	
12 KAR 1:005		
Amended	1812	(See 20 Ky.R.)
12 KAR 1:010		
Amended	1813	(See 20 Ky.R.)
12 KAR 1:025		
Amended	1813	(See 20 Ky.R.)
12 KAR 1:055		
Amended	1814	
12 KAR 1:060		
Amended	1815	(See 20 Ky.R.)
12 KAR 1:065		
Amended	1816	(See 20 Ky.R.)
12 KAR 1:075		
Amended	1817	(See 20 Ky.R.)
12 KAR 1:080		
Amended	1818	(See 20 Ky.R.)
12 KAR 1:085		
Amended	1819	
12 KAR 1:090		
Amended	1820	(See 20 Ky.R.)
12 KAR 1:095		
Amended	1822	
12 KAR 1:100		
Amended	1823	
12 KAR 1:105		
Amended	1824	
14 KAR 1:010		
Amended	2075	
As Amended	2611	6-7-93
32 KAR 2:050	1236	
Amended	2484	(See 20 Ky.R.)
32 KAR 2:060		
Amended	2485	(See 20 Ky.R.)
32 KAR 2:120	2519	
Withdrawn	6-7-93	
32 KAR 2:130	2519	(See 20 Ky.R.)
32 KAR 2:140	2520	(See 20 Ky.R.)
32 KAR 2:150	2521	
103 KAR 5:150	2350	(See 20 Ky.R.)
105 KAR 1:010		
Amended	2288	6-7-93
105 KAR 1:170		
Amended	2290	6-7-93
105 KAR 1:270	2352	6-7-93
200 KAR 6:045	2160	
As Amended	2614	6-7-93
200 KAR 17:060	2522	(See 20 Ky.R.)
200 KAR 19:010	2161	(See 20 Ky.R.)
201 KAR 1:045		
Amended	2661	
201 KAR 1:130		
Amended	2662	
201 KAR 18:180	1697	(See 20 Ky.R.)
201 KAR 18:190	1697	(See 20 Ky.R.)
201 KAR 20:056		
Amended	2664	
201 KAR 20:057		
Amended	2666	
201 KAR 20:161		
Amended	2667	
201 KAR 20:162		
Amended	2669	
201 KAR 20:215		
Amended	2671	
201 KAR 20:235	2755	
201 KAR 20:240		
Amended	2672	
201 KAR 20:260		
Amended	2673	
201 KAR 20:370		
Amended	2674	
201 KAR 22:031		
Amended	2291	
As Amended	2614	6-7-93
201 KAR 22:106		
Amended	2293	6-7-93
201 KAR 27:012	1936	(See 20 Ky.R.)
201 KAR 30:010	2163	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
Amended	2460	
201 KAR 30:020	2164	
Amended	2460	
201 KAR 30:030	2165	
Amended	2461	
201 KAR 30:040	2166	
Amended	2461	
201 KAR 30:050	2167	
Amended	2461	
201 KAR 30:060	2169	
Amended	2463	
201 KAR 30:070	2170	
Amended	2463	
201 KAR 30:080	2171	
Amended	2465	(See 20 Ky.R.)
201 KAR 30:090	2173	
301 KAR 2:047		
Repealed	2239	4-7-93
301 KAR 2:111		
Amended	2675	
301 KAR 2:171	2525	(See 20 Ky.R.)
301 KAR 2:211	2529	(See 20 Ky.R.)
301 KAR 4:100	2531	(See 20 Ky.R.)
302 KAR 20:054	2756	
302 KAR 31:030	2174	
As Amended	2617	6-7-93
302 KAR 31:035	2175	
As Amended	2616	6-7-93
307 KAR 2:010	2533	(See 20 Ky.R.)
307 KAR 3:010	2536	(See 20 Ky.R.)
401 KAR 49:210	2538	(See 20 Ky.R.)
401 KAR 63:035	1466	
Amended	1789	
Witdrawn		6-3-93
500 KAR 4:060		
Amended	2678	
501 KAR 1:040		
Amended	2295	(See 20 Ky.R.)
501 KAR 3:010		
Amended	1844	
As Amended	2618	6-7-93
501 KAR 3:030		
Amended	1845	6-7-93
501 KAR 3:040		
Amended	1846	
As Amended	2619	6-7-93
501 KAR 3:050		
Amended	1847	
As Amended	2620	6-7-93
501 KAR 3:060		
Amended	1850	
As Amended	2623	6-7-93
501 KAR 3:090		
Amended	1852	6-7-93
501 KAR 3:100		
Amended	1853	
As Amended	2624	6-7-93
501 KAR 3:120		
Amended	1854	6-7-93
501 KAR 3:130		
Amended	1856	
As Amended	2625	6-7-93
501 KAR 3:150		
Amended	1857	
As Amended	2625	6-7-93
501 KAR 4:010		
Amended	1860	
As Amended	2628	6-7-93
501 KAR 4:040		
Amended	1860	
As Amended	2628	6-7-93
501 KAR 4:050		
Amended	1862	
As Amended	2629	6-7-93
501 KAR 4:060		
Amended	1865	
As Amended	2631	6-7-93
501 KAR 4:070		
Amended	1867	6-7-93
501 KAR 4:100		
Amended	1867	
As Amended	2632	6-7-93
501 KAR 4:120		
Amended	1868	6-7-93
501 KAR 4:140		
Amended	1869	6-7-93
501 KAR 5:001	1955	6-7-93
501 KAR 5:010		
Repealed	1955	6-7-93
501 KAR 5:020		
Repealed	1955	6-7-93
501 KAR 5:030		
Repealed	1955	6-7-93
501 KAR 5:040		
Repealed	1955	6-7-93
501 KAR 5:050		
Repealed	1955	6-7-93
501 KAR 5:060		
Repealed	1955	6-7-93
501 KAR 5:070		
Repealed	1955	6-7-93
501 KAR 5:080		
Repealed	1955	6-7-93
501 KAR 5:090		
Repealed	1955	6-7-93
501 KAR 5:100		
Repealed	1955	6-7-93
501 KAR 5:110		
Repealed	1955	6-7-93
501 KAR 5:120		
Repealed	1955	6-7-93
501 KAR 5:130		
Repealed	1955	6-7-93
501 KAR 6:020		
Amended	2298	6-7-93
501 KAR 6:030		
Amended	2300	6-7-93
Amended	2486	
Amended	2679	
501 KAR 6:040		
Amended	2301	6-7-93
Amended	2488	
501 KAR 6:050		
Amended	2681	
501 KAR 6:060		
Amended	2303	6-7-93
501 KAR 6:070		
Amended	2489	
501 KAR 6:080		
Amended	2682	
501 KAR 6:090		
Amended	2304	6-7-93
501 KAR 6:110		
Amended	2305	
501 KAR 6:130		
Amended	2307	6-7-93
501 KAR 6:140		
Amended	2308	6-7-93
Amended	2683	
501 KAR 7:040		
Amended	1876	
As Amended	2633	6-7-93

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
501 KAR 7:050		
Amended	1877	
As Amended	2634	6-7-93
501 KAR 7:060		
Amended	1879	
As Amended	2635	6-7-93
501 KAR 7:120		
Amended	1880	6-7-93
501 KAR 10:010	1956	
As Amended	2636	6-7-93
501 KAR 10:020	1957	6-7-93
501 KAR 10:030	1958	6-7-93
501 KAR 10:040	1959	
As Amended	2637	6-7-93
501 KAR 10:050	1961	
As Amended	2637	6-7-93
501 KAR 10:060	1964	
As Amended	2641	6-7-93
501 KAR 10:070	1966	6-7-93
501 KAR 10:080	1967	
As Amended	2642	6-7-93
501 KAR 10:090	1968	6-7-93
501 KAR 10:100	1969	
As Amended	2643	6-7-93
501 KAR 10:110	1970	6-7-93
501 KAR 10:120	1971	6-7-93
501 KAR 10:130	1972	
As Amended	2643	6-7-93
501 KAR 10:140	1973	6-7-93
503 KAR 5:130	2756	
603 KAR 5:050		
Amended	2490	
603 KAR 5:070		
Amended	2309	
As Amended	2644	5-26-93
603 KAR 5:230		
Amended	2684	
603 KAR 9:010	2757	
605 KAR 1:130		
Amended	2313	5-26-93
701 KAR 5:070		
Amended	2492	
704 KAR 3:303		
Amended	2493	
704 KAR 4:020		
Amended	2494	(See 20 Ky.R.)
704 KAR 7:120	2539	(See 20 Ky.R.)
704 KAR 20:120		
Amended	2316	6-7-93
704 KAR 20:198		
Amended	2317	(See 20 Ky.R.)
704 KAR 20:320		
Amended	2319	6-7-93
704 KAR 20:510		
Amended	2322	
As Amended	2647	6-7-93
707 KAR 1:061	2540	
707 KAR 1:160	2541	(See 20 Ky.R.)
707 KAR 1:170	2543	(See 20 Ky.R.)
707 KAR 1:180	2545	(See 20 Ky.R.)
707 KAR 1:190	2551	(See 20 Ky.R.)
707 KAR 1:200	2554	(See 20 Ky.R.)
707 KAR 1:210	2558	(See 20 Ky.R.)
707 KAR 1:220	2561	(See 20 Ky.R.)
707 KAR 1:230	2564	(See 20 Ky.R.)
707 KAR 1:240	2569	
707 KAR 1:250	2572	(See 20 Ky.R.)
707 KAR 1:260	2574	
780 KAR 3:040		
Amended	2496	(See 20 Ky.R.)
780 KAR 9:020		
Amended	2497	
Withdrawn		6-7-93
781 KAR 1:030		
Amended	2323	6-7-93
803 KAR 2:307		
Amended	2734	
803 KAR 2:310		
Amended	2736	
805 KAR 4:005		
Recodified from 805 KAR 4:070		6-8-93
805 KAR 4:010		
Amended	2325	6-7-93
805 KAR 4:070		
Amended	2327	6-7-93
Recodified as 805 KAR 4:005		6-7-93
805 KAR 5:010		
Amended	2739	
805 KAR 7:030		
Amended	2740	
806 KAR 1:010		
Amended	2328	
As Amended	2648	6-7-93
806 KAR 3:150		
Amended	2498	
806 KAR 3:180	2576	
806 KAR 17:090	2353	(See 20 Ky.R.)
806 KAR 30:090	2355	6-7-93
806 KAR 30:100	2356	6-7-93
810 KAR 1:009		
Amended	2499	(See 20 Ky.R.)
810 KAR 1:030	1987	
As Amended	2651	6-7-93
811 KAR 1:070		
Amended	2502	(See 20 Ky.R.)
815 KAR 20:020		
Amended	2503	
815 KAR 20:030		
Amended	2334	6-7-93
815 KAR 20:050		
Amended	2335	6-7-93
815 KAR 20:120		
Amended	2113	
815 KAR 20:130		
Amended	2742	
815 KAR 45:100	2577	(See 20 Ky.R.)
901 KAR 5:032	2759	
902 KAR 8:040	2760	
902 KAR 8:050	2761	
902 KAR 8:060	2763	
902 KAR 8:070	2765	
902 KAR 8:080	2768	
902 KAR 8:090	2770	
902 KAR 8:100	2771	
902 KAR 8:110	2773	
902 KAR 8:120	2774	
902 KAR 8:130	2777	
902 KAR 8:140	2778	
902 KAR 20:004	659	
Amended	2745	
902 KAR 20:016		
Amended	2506	(See 20 Ky.R.)
902 KAR 20:073	2196	
902 KAR 20:291	2199	
Amended	2466	6-7-93
903 KAR 5:290		
Amended	2337	6-7-93
904 KAR 3:010		
Amended	2750	
907 KAR 1:013		
Amended	2515	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
907 KAR 1:016		
Amended	2338	(See 20 Ky.R.)
907 KAR 1:031		
Amended	2148	6-7-93
907 KAR 1:428		
Amended	2339	
As Amended	2653	6-7-93
907 KAR 1:505		
Amended	2340	
907 KAR 1:512	2357	
As Amended	2653	6-7-93
908 KAR 1:310		
Amended	2341	
Amended	2655	(See 20 Ky.R.)
908 KAR 2:070	2779	

*Statement of Consideration Not Filed by Deadline; Regulation Expired (KRS 13A.280(2))

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

302 KAR 15:010E	4	5-18-93
603 KAR 9:010E	7	5-19-93
806 KAR 2:120E	8	6-15-93
806 KAR 2:130E	8	6-15-93
902 KAR 8:040E	9	5-19-93
902 KAR 8:050E	10	5-19-93
902 KAR 8:060E	11	5-19-93
902 KAR 8:070E	13	5-19-93
902 KAR 8:080E	15	5-19-93
902 KAR 8:090E	17	5-19-93
902 KAR 8:100E	18	5-19-93
902 KAR 8:110E	19	5-19-93
902 KAR 8:120E	19	5-19-93
902 KAR 8:130E	23	5-19-93
902 KAR 8:140E	23	5-19-93
902 KAR 20:004E	24	5-18-93
905 KAR 2:001E	29	6-7-93
905 KAR 2:011E	31	6-7-93
905 KAR 2:090E	31	6-7-93
905 KAR 2:100E	33	6-7-93
905 KAR 2:110E	36	6-7-93
905 KAR 2:120E	38	6-7-93
905 KAR 2:130E	42	6-7-93

ORDINARY REGULATIONS:

11 KAR 3:100		
Amended	96	
11 KAR 6:010		
As Amended	44	
12 KAR 1:005		
As Amended	45	
12 KAR 1:010		
As Amended	46	
12 KAR 1:025		
As Amended	47	
12 KAR 1:060		
As Amended	47	
12 KAR 1:065		
As Amended	47	
12 KAR 1:075		
As Amended	48	
12 KAR 1:080		
As Amended	48	
12 KAR 1:090		
As Amended	50	
32 KAR 2:050		
As Amended	50	
32 KAR 2:060		
As Amended	50	
32 KAR 2:130		
As Amended	51	
32 KAR 2:140		
As Amended	51	
45 KAR 1:070	163	
103 KAR 5:150		
As Amended	52	
109 KAR 10:010		
Amended	131	
200 KAR 17:060		
As Amended	53	
200 KAR 19:010		
As Amended	55	
201 KAR 9:310	163	
201 KAR 18:180		
As Amended	56	
201 KAR 18:190		
As Amended	56	
201 KAR 27:012		
As Amended	60	6-11-93
201 KAR 30:080		
As Amended	60	
301 KAR 2:171		
As Amended	62	
301 KAR 2:211		
As Amended	66	
301 KAR 4:100		
As Amended	67	
307 KAR 2:010		
As Amended	69	
307 KAR 3:010		
As Amended	70	
401 KAR 49:210		
As Amended	72	
401 KAR 57:041	164	
401 KAR 58:001	166	
401 KAR 58:020	168	
401 KAR 59:435	189	
401 KAR 59:450	190	
401 KAR 59:455	192	
401 KAR 59:465	193	
401 KAR 59:485	195	
401 KAR 59:490	197	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	19 Ky.R Page No.	Effective Date
401 KAR 59:495	198	
401 KAR 59:500	200	
401 KAR 59:505	202	
401 KAR 59:535	203	
401 KAR 59:540	205	
401 KAR 59:545	207	
401 KAR 59:550	208	
401 KAR 59:555	210	
401 KAR 59:570	211	
401 KAR 59:575	213	
401 KAR 59:580	215	
401 KAR 59:585	216	
401 KAR 59:590	218	
401 KAR 59:595	220	
401 KAR 63:036	221	
405 KAR 10:050		
Amended	132	
405 KAR 12:001		
Amended	134	
405 KAR 12:010		
Amended	137	
501 KAR 1:040		
As Amended	72	
501 KAR 6:020		
Amended	139	
501 KAR 6:030		
Amended	141	
501 KAR 6:130		
Amended	143	
501 KAR 6:140		
Amended	144	
600 KAR 1:100	227	
601 KAR 11:040		
Amended	145	
602 KAR 50:010		
Amended	148	
603 KAR 3:080	236	
702 KAR 3:190		
Amended	150	
703 KAR 3:205	241	
704 KAR 3:405		
Amended	152	
704 KAR 4:020		
As Amended	75	
704 KAR 7:120		
Amended	98	
704 KAR 20:198		
As Amended	77	
705 KAR 2:031	243	
707 KAR 1:160		
Amended	98	
707 KAR 1:170		
Amended	100	
707 KAR 1:180		
Amended	101	
707 KAR 1:190		
Amended	107	
707 KAR 1:200		
Amended	109	
707 KAR 1:210		
Amended	112	
707 KAR 1:220		
Amended	114	
707 KAR 1:230		
Amended	117	
707 KAR 1:250		
Amended	120	
780 KAR 2:015	244	
780 KAR 3:040		
As Amended	79	
780 KAR 3:140		
Amended	154	
780 KAR 4:030	245	
780 KAR 7:035	246	
806 KAR 2:120	247	
806 KAR 2:130	248	
806 KAR 17:090		
As Amended	79	
810 KAR 1:009		
As Amended	81	
811 KAR 1:070		
As Amended	83	
815 KAR 45:100		
As Amended	85	
902 KAR 20:016		
Amended	121	
903 KAR 5:270		
Amended	155	
905 KAR 2:001	249	
905 KAR 2:010		
Repealed	31	6-7-93
905 KAR 2:011	250	
905 KAR 2:090	251	
905 KAR 2:100		
Amended	155	
905 KAR 2:110	254	
905 KAR 2:120	256	
905 KAR 2:130	261	
907 KAR 1:016		
As Amended	87	
907 KAR 1:017		
Amended	161	
908 KAR 1:310		
As Amended	88	

KRS SECTION	REGULATION
17.165	905 KAR 2:001
	905 KAR 2:090
	905 KAR 2:100
	905 KAR 2:110
	905 KAR 2:120
	905 KAR 2:130
42.450-42.495	109 KAR 10:010
45A.800-45A.835	600 KAR 1:100
61.190	45 KAR 1:070
64.840	45 KAR 1:070
64.850	45 KAR 1:070
66.480	45 KAR 1:070
68.300	45 KAR 1:070
132.601	45 KAR 1:070
151B.025	780 KAR 2:015
151B.030	780 KAR 2:015
151B.035	780 KAR 3:140
151B.110	780 KAR 2:015
	780 KAR 4:030
	780 KAR 7:035
151B.145	780 KAR 2:015
151B.150	780 KAR 7:035
156.035	705 KAR 2:031
156.070	705 KAR 2:031
156.111	704 KAR 3:405
157.360	702 KAR 3:190
158.780	703 KAR 3:205
158.785	703 KAR 3:205
160.350	704 KAR 3:405
177.830-177.890	603 KAR 3:080
183.861-183.990	602 KAR 50:010
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:130
	501 KAR 6:140
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:130
	501 KAR 6:140
199.894-199.898	905 KAR 2:001
	905 KAR 2:011
	905 KAR 2:090
	905 KAR 2:110
	905 KAR 2:120
	905 KAR 2:130
199.898	905 KAR 2:100
199.8982	905 KAR 2:100
205.520	907 KAR 1:017
Chapter 224	401 KAR 63:036
224.01-010	401 KAR 58:001
	401 KAR 63:036
224.10-100	401 KAR 57:041
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
224.20-100	401 KAR 57:041
	401 KAR 58:001
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
224.20-110	401 KAR 57:041
	401 KAR 58:001
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
224.20-120	401 KAR 57:041
	401 KAR 58:001
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505

KRS SECTION	REGULATION
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
224.20-300	401 KAR 58:020
224.20-320	401 KAR 58:020
224.99-010	401 KAR 58:020
281.600	601 KAR 11:040
Chapter 281A	601 KAR 11:040
304.2-250	806 KAR 2:120
304.2-260	806 KAR 2:130
304.2-270	806 KAR 2:130
311.565	201 KAR 9:310
311.601	201 KAR 9:310
341.380	903 KAR 5:270
Chapter 350	405 KAR 12:001
350.020	405 KAR 10:050
	405 KAR 12:010
350.028	405 KAR 12:010
350.050	405 KAR 12:010
350.060	405 KAR 10:050
350.064	405 KAR 10:050
350.085	405 KAR 12:010
350.093	405 KAR 10:050
350.095	405 KAR 10:050
350.113	405 KAR 12:010
350.130	405 KAR 10:050
	405 KAR 12:010
350.131	405 KAR 10:050
350.151	405 KAR 10:050
	405 KAR 12:010
350.465	405 KAR 10:050
	405 KAR 12:010
350.990	405 KAR 12:010
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:130
	501 KAR 6:140
Ky.Const. §173	45 KAR 1:070
14 CFR	602 KAR 50:010
23 CFR	600 KAR 1:100
	603 KAR 3:080
30 CFR	405 KAR 10:050
	405 KAR 12:001
	405 KAR 12:010
40 CFR	401 KAR 57:041
	401 KAR 58:020
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545

KRS SECTION	REGULATION
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
49 CFR	601 KAR 11:040
23 USC	600 KAR 1:100
	603 KAR 3:080
30 USC	405 KAR 10:050
	405 KAR 12:001
	405 KAR 12:010
42 USC	401 KAR 57:041
	401 KAR 59:435
	401 KAR 59:450
	401 KAR 59:455
	401 KAR 59:465
	401 KAR 59:485
	401 KAR 59:490
	401 KAR 59:495
	401 KAR 59:500
	401 KAR 59:505
	401 KAR 59:535
	401 KAR 59:540
	401 KAR 59:545
	401 KAR 59:550
	401 KAR 59:555
	401 KAR 59:570
	401 KAR 59:575
	401 KAR 59:580
	401 KAR 59:585
	401 KAR 59:590
	401 KAR 59:595
	401 KAR 63:036
	905 KAR 2:100

SUBJECT INDEX

AERONAUTICS
Airport Zoning Commission
Definitions; 602 KAR 50:010

AIR QUALITY
Asbestos
Controlling asbestos emissions; 401 KAR 58:020
Definitions, abbreviations; 401 KAR 58:001
General Standards of Performance
Stage II, gasoline dispensing facilities; 401 KAR 63:036
Hazardous Pollutants
Benzene waste operations; 401 KAR 57:041
New Source Standards
Basic oxygen process furnaces after June 11, 1973; 401 KAR 59:500
Basic oxygen process steelmaking facilities after January 20, 1983; 401 KAR 59:505
Glass manufacturing plants; 401 KAR 59:585
Grain elevators; 401 KAR 59:590
Hot mix asphalt facilities; 401 KAR 59:465
Industrial-commercial-institutional steam generators; 401 KAR 59:435
Kraft pulp mills; 401 KAR 59:580
Metal furniture surface coating; 401 KAR 59:595
Nitric acid plants; 401 KAR 59:455
Phosphate fertilizer, diammonium phosphate plants; 401 KAR 59:545
Phosphate fertilizer, granular triple superphosphate storage facilities; 401 KAR 59:555
Phosphate fertilizer, superphosphoric acid plants; 401 KAR 59:540
Phosphate fertilizer, triple superphosphate plants; 401 KAR 59:550
Phosphate fertilizer, wet-process phosphoric acid plants; 401 KAR 59:535
Secondary brass, bronze production plants; 401 KAR 59:495
Secondary lead smelters; 401 KAR 59:490
Steel, electric arc furnaces after October 21, 1974, before August 17, 1983; 401 KAR 59:570
Steel, electric arc furnaces, argon-oxygen decarburization vessels after August 17, 1983; 401 KAR 59:575
Portland cement plants; 401 KAR 59:450
Volatile organic liquid storage vessels after July 23, 1984; 401 KAR 59:485

AUDITS
(See AUDITOR OF PUBLIC ACCOUNTS)

AUDITOR OF PUBLIC ACCOUNTS
Technical audit bulletins; 45 KAR 1:070

CORRECTIONS
Office of the Secretary
Bell County Forestry Camp; 501 KAR 6:140
Kentucky State Reformatory; 501 KAR 6:030
Policies and procedures; 501 KAR 6:020
Western Kentucky Correctional Complex; 501 KAR 6:130

DISTRICT SUPPORT SERVICES (EDUCATION)
School Administration, Finance
Maximum class sizes; 702 KAR 3:190

ECONOMIC ASSISTANCE
(See Local Government)

EDUCATION AND HUMANITIES
Education
District Support Services
School administration, finance; 702 KAR Chapter 3
Learning Programs Development
Instruction; 704 KAR Chapter 3
Learning Results Services
Assistance, intervention services; 703 KAR Chapter 3
Special Instructional Services
Fiscal management; 705 KAR Chapter 2

EMPLOYMENT SERVICES
Unemployment Insurance
Maximum weekly benefit rates; 903 KAR 5:270

HIGHWAYS
Maintenance
Advertising devices; 603 KAR 3:080

HUMAN RESOURCES
Employment Services
Unemployment insurance; 903 KAR Chapter 5
Medicaid services; 907 KAR Chapter 1
Social Services
Day care; 905 KAR Chapter 2

INSURANCE
Administration
Filing of examination report; 806 KAR 2:120
Information disclosure, examinations; 806 KAR 2:130

JAIL STANDARDS
(See CORRECTIONS)

JUSTICE
Corrections (See CORRECTIONS)

LEARNING PROGRAMS DEVELOPMENT (EDUCATION)
Instruction
Superintendent training program, assessment process; 704 KAR 3:405

LEARNING RESULTS SERVICES (EDUCATION)
Assistance, Intervention Services
Management improvement program; 703 KAR 3:205

LOCAL GOVERNMENT
Policy and Management
Economic assistance fund grants; 109 KAR 10:010

MEDICAID SERVICES
Hospital indigent care assurance program; 907 KAR 1:017

MEDICAL LICENSURE BOARD
Continuing medical education; 201 KAR 9:310

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapters 57 through 63
Surface Mining Reclamation, Enforcement; 405 KAR Chapters 10 through 12

OCCUPATIONS AND PROFESSIONS
Medical licensure; 201 KAR Chapter 9

PUBLIC PROTECTION AND REGULATION CABINET
Insurance
Administration; 806 KAR Chapter 2

SOCIAL SERVICES
Day Care
Child care discipline; 905 KAR 2:130
Child care facility health, safety standards; 905 KAR 2:120
Child care facility licensure; 905 KAR 2:090
Child care facility provider requirements; 905 KAR 2:110
Definitions; 905 KAR 2:001
Family child care homes certification; 905 KAR 2:100
Repealer; 905 KAR 2:011

SPECIAL INSTRUCTIONAL SERVICES (EDUCATION)
Fiscal Management
Repealer; 705 KAR 2:031

SURFACE MINING RECLAMATION, ENFORCEMENT
Bond and Insurance Requirements
Bond forfeiture; 405 KAR 10:050
Inspection and Enforcement
Definitions; 405 KAR 12:001
General provisions; 405 KAR 12:010

TRANSPORTATION
Administration
Professional engineering, related services procurement; 600 KAR 1:100
Aeronautics
Airport zoning commission; 602 KAR Chapter 50
Highways
Maintenance; 603 KAR Chapter 3
Vehicle Regulation
Commercial driver's license; 601 KAR Chapter 11

VEHICLE REGULATION
Commercial Driver's License
Medical waivers, commercial vehicles intrastate operators; 601 KAR 11:040

WORKFORCE DEVELOPMENT
Facilities and Equipment
Technical institute standards; 780 KAR 7:035
Instructional Programs
Technical degree requirements, postsecondary students; 780 KAR 4:030
Management of the Kentucky Tech System
Administration of technical institutes; 780 KAR 2:015
Personnel System, Certified and Equivalent Employees
Certification, professional development requirements; 780 KAR 3:140