ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 20, NUMBER 4
FRIDAY, OCTOBER 1, 1993

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on October 4, 1993 at 10 a.m.. See **tentative** agenda on pages 733-735 in this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1993 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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

ADMINISTRATIVE REGISTER OF KENTUCKY
(ISSN 0096-1493)
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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: $48 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky.
POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - October 4, 1993 at 10 a.m.
Room 149, State Capitol Annex

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401 KAR 58:001. Definitions and abbreviations of terms used in Title 401, Chapter 58. (Not Amended After Hearing) (Deferred from September)

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907 KAR 1:045 & E. Payments for mental health center services.

Department for Mental Health and Mental Retardation Services

Mental Health
908 KAR 2:060 & E. Mental health and mental retardation manuals for plan and budget instructions, billing instructions, and reimbursement guidelines.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE

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

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

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

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

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

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
9 KAR 1:040E

KRS 11A.201 to 11A.246 and 11A.990(5) to (9) establishes the requirements for executive agency lobbying, including forms and penalties for violation thereof. The effective date of Senate Bill 7, 1993 (1st Extra. Sess.) Ky. Acts Ch. 4, secs. 45 to 55 (to be codified as KRS 11A.201 to 11A.246 and 11A.990(5) through (9)), is September 16, 1993. KRS 11A.211 requires the filing of an initial registration statement by an executive agency lobbyist and his employer within ten (10) days following the engagement of an executive agency lobbyist. KRS 11A.211(6) requires the commission to issue a registered executive agency lobbyist a registration card. Engaged executive agency lobbyists and their employers will be required to file initial registration statements with the commission on the effective date of Senate Bill 7. The commission is required to implement the provisions of KRS 11A.201 to 11A.246 by administrative regulation, including the initial registration statement form. This administrative regulation establishes the initial registration form and the registration card, and must be filed as an emergency in order to implement the provisions of Senate Bill 7 by its effective date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on or before September 15, 1993.

BRERETON C. JONES, Governor
LIVINGSTON TAYLOR, Chairman

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:040E. Initial registration statement and registration card.

RELATES TO: KRS 11A.211, 11A.241(4),(5)
STATUTORY AUTHORITY: KRS 11A.241(4),(5),(6)
EFFECTIVE: September 9, 1993
NECESSITY AND FUNCTION: KRS 11A.201 to 11A.246 and 11A.990(5) to (9) establishes the requirements for executive agency lobbying, including forms and penalties for violation thereof. The effective date of Senate Bill 7, 1993 (1st Extra. Sess.) Ky. Acts Ch. 4, secs. 45 to 55 (to be codified as KRS 11A.201 to 11A.246 and 11A.990(5) to (9)) is September 16, 1993. KRS 11A.211(1) requires the filing of an initial registration statement by an executive agency lobbyist and his employer within ten (10) days following the engagement of an executive agency lobbyist. KRS 11A.211(6) requires the commission to issue a registered executive agency lobbyist a registration card. Engaged executive agency lobbyists and their employers will be required to file initial registration statements with the commission on the effective date of Senate Bill 7. The commission is required to implement the provisions of KRS 11A.201 to 11A.246 by administrative regulation, including the initial registration statement form. This administrative regulation establishes the initial registration form and the registration card.

Section 1. Definitions. "Regular and substantial basis" means the executive agency lobbying activity regarding a decision that involves state expenditures that exceed $5,000.

Section 2. (1) Effective September 16, 1993, an "Initial Registration Statement" shall be filed by an engaged executive agency lobbyist and his employer within ten (10) days following the engagement of the lobbyist.

(2) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist has been engaged or for which he is responsible, such as an award of a:

(a) Grant for social services;

(b) Lease for office space or equipment;

(c) Contract to provide food, clothing or other consumable products;

(d) Personal service contract.

(3) The "Initial Registration Statement" shall be signed in ink of any color except black.

(4)(a) The "Initial Registration Statement" may be reproduced by an executive agency lobbyist or his employer.

(b) The signature on an "Initial Registration Statement" shall be an original signature.

Section 3. Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Executive Agency Lobbyist/Employer Initial Registration Statement (EBEC:EAL:I 9/93)"; and

(b) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist (9/93)".

(2) The "Executive Agency Lobbyist/Employer Initial Registration Statement (EBEC:EAL:I 9/93)" may be inspected, copied, or obtained from the Executive Branch Ethics Commission, Room 71-D, State Capitol, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: September 9, 1993
FILED WITH LRC: September 9, 1993 at 1 p.m.

STATEMENT OF EMERGENCY
31 KAR 5:020E

This emergency administrative regulation describes the placement of voting machines as to prevent unlawful voting activity. This emergency administrative regulation is needed in order to prevent unlawful voting activity in the November 2, 1993 General Election and therefore, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 15, 1993.

BRERETON C. JONES, Governor
BOB BABBAGE, Chairman

GENERAL GOVERNMENT CABINET
State Board of Elections

31 KAR 5:020E. Placement of voting machines.

RELATES TO: KRS 117.065
STATUTORY AUTHORITY: KRS 117.015(1), 117.035(1)
EFFECTIVE: September 15, 1993
NECESSITY AND FUNCTION: County boards of elections are

required to select voting locations. This regulation describes the placement of voting machines so as to prevent unlawful voting activity.

Section 1. Where polling is conducted by the voters' operation of a machine, whether mechanical or electronic, the machine shall be positioned so that all persons using the machine for voting are visible to the clerk of the election and to the voters waiting to use the machine.

Section 2. Where polling is conducted at a machine which employs a curtain or similar device to protect the secrecy of the voters' selections, the machine shall be placed so that all persons entering the area behind the curtain are visible to the clerk of the election and to the voters waiting to use the machine.

Section 3. Where polling is conducted by paper ballot or by the use of paper cards as part of an electronic voting system, the tables or desks used by the voters in filling out the ballots or cards shall be positioned so that all persons filling out the ballots or cards are visible to the clerk of the election and to the voters waiting to vote.

Section 4. In no case shall the county board of elections authorize the placement of voting machines in a room or area separated by a wall or other obstruction from the area occupied by the clerk of the election and the voters waiting to vote.

BOB BABBAGE, Chairman
APPROVED BY AGENCY: September 14, 1993
FILED WITH LRC: September 15, 1993 at 10 a.m.

STATEMENT OF EMERGENCY
902 KAR 65:010E

This emergency regulation establishes a program for the reporting of the appropriate data on charges, quality and outcome, and sets forth the required forms and submission time frames in accordance with KRS 216.270 through 216.287. The Kentucky Health Care Data Commission is required to promulgate this regulation by September 1, 1993. The emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler for the September 15, 1993, filing.

BRERETON C. JONES, Governor
ROBERT L. JOHNSON, Chairman

CABINET FOR HUMAN RESOURCES
Kentucky Health Care Data Commission

902 KAR 65:010E. Health data reporting by hospitals and ambulatory care facilities.

RELATES TO: KRS 216.270 to 216.287, 304.99-125
STATUTORY AUTHORITY: KRS 216.275, 216.280
EFFECTIVE: September 1, 1993
NECESSITY AND FUNCTION: KRS 216.270 through 216.287 mandate the Kentucky Health Care Data Commission to promulgate regulations that require specified health care providers to furnish to the commission information relating to cost, quality and outcomes of health services provided in the Commonwealth. This regulation sets forth the data elements, forms, and timetables for submission required by the commission.

Section 1. Definitions. (1) "Hospitalization" means the inpatient episode defined by a patient's admission and discharge dates and identified by a patient control number unique to that inpatient episode.

(2) "Encounter" means each instance of ambulatory care and services provided for an ambulatory patient of a hospital or an ambulatory facility.

(3) "UB-82" means the uniform billing form, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for hospitals' use in billing for inpatient hospitalizations and outpatient and ambulatory encounters, ordered by the Commissioner of Insurance to be accepted by insurers effective May 19, 1983, and further identified by the federal Health Care Financing Administration as Form HCFA-1450 and approved under federal Office of Management and Budget number "OMB No. 0938-0279," as incorporated by reference in Section 8 of this administrative regulation.

(4) "UB-92" means the uniform billing form as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for hospitals' use in billing for inpatient hospitalizations and outpatient and ambulatory encounters effective with the transition period of October 1 through December 31, 1993 as planned by the Kentucky Uniform Billing Committee, and implemented by order of the Commissioner of Insurance dated July 8, 1993, and as incorporated by reference in Section 8 of this administrative regulation.

(5) "Uniform Billing Training Manual" means the manual of instructions distributed in 1983 for completing the UB-82, and its successor manual for completing the UB-92 developed as of June 24, 1993 and corrected August 4, 1993, both published by the Kentucky Uniform Billing Committee and both of which are incorporated by reference in Section 8 of this administrative regulation.

(6) "HCFA 1500" means Health Care Financing Administration Form 1500, commonly used to bill for ambulatory patient encounters and ordered by the Commissioner of Insurance to be accepted by insurers effective August 30, 1990, and further identified as Form OWCP-1500, as approved by the American Medical Association Council on Medical Service and approved under federal Office of Management and Budget number "OMB-0938-0008" as incorporated by reference in Section 8 of this administrative regulation.

(7) "Record" means documentation of one (1) hospitalization or one (1) ambulatory encounter on a UB-82, UB-92, or HCFA-1500, whether retained on a paper form or on a computer-readable electronic medium.

(8) "Agent" means any entity with which the commission may contract to perform any task specified by the commission pursuant to carrying out its statutory mandates.

Section 2. Data Submission Requirements. (1) Hospitals.

(a) Except as provided in subsection (4) of this section, hospitals, as defined in KRS 216.270, shall record each hospitalization and ambulatory encounter on the UB-92 utilizing the instructions in the Uniform Billing Training Manual, and shall submit a copy of every UB-92 record to the commission or its designated agent.

(b) Each copy shall contain all of the UB-92 data elements identified in Section 6 of this administrative regulation, and shall otherwise be an exact duplicate of the original record.

(c) 100 percent of the completed hospitalizations and ambulatory encounters of patients of a hospital shall be included in the reporting to the commission and, in the event that any ambulatory encounter of a hospital patient is not recorded on a UB-92, that encounter shall be recorded on a HCFA-1500 as specified in subsection (2) of this section.

(2) Ambulatory facilities.

(a) Except as provided in subsection (3) of this section, ambulatory facilities as defined in KRS 216.270 shall record each ambulatory patient encounter on the HCFA 1500, and shall submit a copy of every HCFA 1500 record to the commission or its designated agent.

(b) Each copy shall contain all of the HCFA 1500 data elements identified in Section 6 of this administrative regulation, and shall

otherwise be an exact duplicate of the original record.

(3) Special situations. When a patient is served by a mobile health service or specialized medical technology service providing services under contract or other arrangement with a provider, responsibility for submitting a copy of the record to the commission, or its designated agent, shall reside with the entity that bills for the service.

(4) UB-82 to UB-92 transition period. In the event that the Kentucky Uniform Billing Committee's planned schedule for exclusive use of the UB-92 is not fully implemented by January 1, 1994, the commission may require any hospital to temporarily continue submitting data on the UB-82 beyond the planned period of parallel use of the UB-82 and UB-92 from October 1 through December 31, 1993 as scheduled by the committee.

(5) Mode of transmission of records.

(a) Providers with capability to make monthly submissions of records on computer-readable electronic media shall do so according to specifications prescribed by the commission.

(b) Specifications shall encompass electronic transmission by computer modem and include provisions for back up against accidental erasure or loss in the mail in the event that electronic media are delivered by mail.

(c) Providers who submit records in the form of paper copies shall either deliver the copies or send them in secure packaging by registered mail postmarked on or before the due date.

(6) Universal reporting. Hospitals and ambulatory facilities shall generate and report to the commission a UB-92 or HCFA-1500 on every patient as provided in subsections (1) through (5) of this section, regardless of whether a bill is to be generated and presented to the patient.

(7) Certification of data. Data submitted to the commission for each reporting period shall be accompanied by a letter signed by the chief executive officer of the reporting organization and certifying that the submission is believed to be complete, accurate, and in all other respects in compliance with the commission's requirements.

Section 3. Data Submission Scheduling Requirements. (1) Reporting periods. Hospitals and ambulatory facilities shall submit the required record copies to the commission for all patient discharges and encounters occurring during each calendar month, beginning with the month ending January 31, 1994, except as provided under subsection (3) of this section.

(2) Due dates. Each submission shall be due to the commission no later than forty-five (45) days after the last day of each reporting period.

(3) Quarterly reporting waivers.

(a) After June 30, 1994, the commission may grant waivers permitting providers to submit records quarterly rather than monthly. Waivers shall be available only to those providers who have demonstrated the capability to submit records on computer-readable electronic media usable by the commission and within time frames specified by this administrative regulation.

(b) The commission may revoke a waiver for failure to provide usable media by the due date.

(4) Submission of corrected records.

(a) The commission shall allow providers twenty (20) days in which to submit corrected copies of all records the commission identifies as incomplete or invalid as a result of the commission's editing procedures.

(b) The twenty (20) days shall begin on the postmarked date of the commission's mailed notice.

(c) Providers shall submit corrected copies by either electronic transmission or postmarked mailing within the twenty (20) days.

(d) Corrected records shall be fully completed as provided in Section 2(1) and (2) of this administrative regulation.

Section 4. Working Contacts. (1) Formal communications to a reporting organization from the commission shall be directed to the chief executive officer of the hospital or ambulatory facility.

(2) To facilitate staff level follow-up by commission employees in dealing with daily working details, each hospital and ambulatory facility shall report to the commission by December 30 each year the names of a designated working contact person and a back-up person, neither of whom shall be the chief executive officer, to serve as point of contact for informal working communications from the commission.

(3) If the chief executive officer, designated contact person or back-up person changes during the year the names of the replacement officer or working contact shall be reported immediately to the commission.

Section 5. Confidentiality. (1) The commission shall, as an initial step in computer processing of record copies received, arrange for the patient Social Security number on each record to be computer translated into an encoded unique record identifier which assures anonymity for the person named on the record.

(2) Immediately after this translation the Social Security number and any other data element(s) which could be used to identify the person about whom the record was created shall be deleted from the commission's data base.

(3) The encoded unique record identifier shall be permanently assigned to the record and shall be designed to permit computer linking of the record to any other record on the same individual that may exist in or be subsequently added to the commission's data base.

Section 6. Minimum Required Data Elements. (1) Hospital records. Hospitals shall ensure that each record submitted to the commission contains at least the following data elements as provided for on the UB-82 and UB-92 forms and in the Uniform Billing Training Manual, except as otherwise specified in paragraphs (b) and (c) of this subsection.

(a) Existing data elements using existing codes.

UB82 Form Locator #	UB92 Form Locator #	Data Element Label
4	4	Type of Bill
6	5	Federal Tax Number
22	6	Statement Covers Period
24	8	Noncovered Days
11	13	Patient Address
12	14	Patient Birthdate
13	15	Patient Sex
15	17	Admission Date
16	16	Patient Marital Status
17	19	Type of Admission
18	20	Source of Admission
21	22	Patient Status
28-32	32-35	Occurrence Codes & Dates, if applicable
33	36	Occurrence Span Codes & Dates, if applicable
-	23	Medical Record Number
53	47	Total Charges (by Revenue Code Category)
54	48	Noncovered Charges
57	50	Payor Identification
72	64	Employment Status Code
77	67	Principal Diagnosis Code
78-81	68-75	Other Diagnoses Code, if applicable
N/A	76	Admitting Diagnosis
N/A	77	External Cause of Injury Code (E-Code), if applicable

82	79	Procedure Coding Method Used
84	80	Principal Procedure Code and Date, If applicable
85-86	81	Other Procedure Codes and Date, if applicable

(b) Existing data elements with special coding instructions.

UB82 Form Locator #	UB92 Form Locator #	Data Element Label	Special Coding Instructions/ Requirements
92	82	Attending Physician ID	Line 1: License No. Assigned by Ky. Board of Medical Licensure
93	83	Other Physician ID	Line 1: License No. Assigned by Ky. Board of Medical Licensure

(c) New data elements.

New Data Element Label	Reserved Field # on Form UB82	Reserved Field # on Form UB92	Special Coding Instructions/ Requirements
Race	2	2	Line 1: Code Structure: W: White (not Hispanic) B: Black (not Hispanic) H: Hispanic I: American Indian/ Alaska Native A: Asian/Pacific Islander O: Other
Social Security #	2	2	Line 2
Birth Weight	9	11	Report birth weight in grams for those patients identified as "newborns" in Form Locator 20 "Source of Admission"
Unusual rence - Readmission	27	78	Readmission to the Occur- same facility within 30 days. Code Structure: 1: Noncompliance of medical instructions by patient resulting in readmission 2: Scheduled Readmission 3: Patient Complications from previous admission 4: Unrelated New Admitting Diagnosis
Unusual Occurrence - Nosocomial Infection	27	78	Code Structure: Y: Nosocomial infection(s) detected/reported during this admission.

(2) Ambulatory facility records. Ambulatory facilities shall ensure that each record submitted to the commission contains at least the following data elements as provided for on the HCFA-1500 form, or as otherwise specified in paragraphs (b) and (c) of this subsection.

(a) Existing data elements using existing codes.

Item #	Data Element
1	Payor Type
3	Patient's Date of Birth
3	Gender
5	Patient's Address (include zip code)
8	Patient Status
10 A,B,C	Is condition related to employment, auto accident or other accident?
18	Hospitalization dates related to current services, if applicable
21	Diagnosis or nature of illness or injury, all that apply
24A	Dates of Service
24D	Procedures, Services, Supplies
24F	Charges
25	Federal Tax ID #
28	Total Charge

(b) Existing data elements with special coding instructions.

Item #	Data Element	Special Coding Instructions
31	Signature of Physician or Supplier including degrees or credentials	License Number Assigned By Ky. Board of Medical Licensure

(c) New data elements.

New Data Element Label	Reserved Item # on HCFA-1500	Special Coding Instructions
Race//Social Security #	19	Code Structure: W: White (not Hispanic) B: Black (not Hispanic) H: Hispanic I: American Indian/Alaska Native A: Asian/Pacific Islander O: Other (Enter single - digit race code in first character position, followed by two slashes (no spaces); then enter Social Security Number in the next nine character positions (no hyphens)).

Section 7. Noncompliance and Penalties. (1) A hospital or ambulatory facility found by the commission to be in noncompliance with the provisions of this regulation shall be subject to the penalties and enforcement options, including suspension of licensure, available to the commission. A hospital or facility shall not be considered in violation if:

(a) It submits corrected copies, within the allowed period, of any records found to be deficient under Section 3(4) of this administrative regulation; or

(b) The number of records found to be deficient does not exceed one (1) percent of the total number of records required to be submitted within a reporting period.

(2) Upon a finding of noncompliance, the commission shall file a report of its findings with the Cabinet for Human Resources Office of Inspector General.

Section 8. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, Form UB-82, Form UB-92, the UB-82 and UB-92 Uniform Billing Training Manuals, and Form HCFA-

1500 are incorporated by reference.

(2) These forms and the manual may be inspected, copied or obtained at the Kentucky Health Care Data Commission, c/o Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

ROBERT L. JOHNSON, Chairman

APPROVED BY AGENCY: August 31, 1993

FILED WITH LRC: September 1, 1993 at 2 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 September 3, 1993, meeting unless otherwise noted.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

11 KAR 10:010. Paul Douglas teacher scholarship program.

RELATES TO: KRS 164.744(2), 164.748(7), (8), 34 CFR Part 653

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 CFR Part 653, subparts C, D, E

NECESSITY AND FUNCTION: PL 98-558 established the Carl D. Perkins Scholarship Program, subsequently renamed the Congressional Teacher Scholarship Program and then renamed the Paul Douglas Teacher Scholarship Program, to encourage highly qualified [~~academically talented~~] students to become teachers in a public or private, nonprofit preschool, elementary or secondary school[~~, or education program~~] in any state. Pursuant to Section 523(b)(2) [~~563~~] of the federal act (20 USC §1105b(b)(2) [~~§1119d-2~~]), the governor designated the authority as the agency to administer this program on behalf of the Commonwealth. 34 CFR 653.32(a) authorizes the authority to establish selection criteria. 34 CFR 653.20(b)(5) and 653.21 require the authority to limit the amount of awards, restrict eligibility for awards, and authorizes the authority to establish policies and procedures necessary to administer repayment. This **administrative** regulation prescribes rules for the administration of the Paul Douglas Teacher Scholarship Program. This amendment is necessary to conform to amendments to the federal Act enacted by PL 102-325. [~~corrects the name of the program and makes other changes to conform with the format requirements of KRS Chapter 13A.~~]

Section 1. Definitions. (1) "Academic year award" means the aggregate amount of scholarship assistance received for one (1) academic year (July 1 through June 30) represented by one or more recipient agreements or promissory notes.

(2) "Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one (1) of the following:

(a) Two (2) semesters.

(b) Two (2) trimesters.

(c) Three (3) quarters.

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

(4) "Course of study" means a first undergraduate program of study at an institution of higher education, which leads to initial teacher certification at the preschool, elementary or secondary school level, but does not include graduate study unless it is required for initial teacher certification.

(5) "Collection costs" mean the costs incurred by the authority or its agents, including the costs of long distance phone calls, certified mail, skiptracing, court costs, and attorney fees, necessary to recover past due payment from the scholar.

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

(7) "Full-time student" means a student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

(8) "Institution of higher education" means a public or private, nonprofit educational institution approved by the secretary under the federal act for participation in the Paul Douglas Teacher Scholarship program.

(9) [~~"Qualified teaching service" means to teach on a full-time basis in a public or private, nonprofit preschool, elementary, or secondary school or education program, in any state.~~

~~(10)~~] "Scholar" means a Paul Douglas Teacher Scholarship recipient.

(10) [~~(11)~~] The definition of "scholarship" is governed by KRS 164.740(18).

(11) [~~(12)~~] The definition of "secretary" is governed by KRS 164.740(20).

Section 2. The authority shall, to the extent of funds available for such purpose, award Paul Douglas Teacher Scholarships to persons enrolled or accepted for enrollment as a full-time student in a course of study at an institution of higher education, who declare an intention to [~~enter the~~] teach[~~ing profession in a qualified teaching service position~~] and who meet the eligibility requirements set forth in Section 3 of this **administrative** regulation and are selected pursuant to Section 4 of this **administrative** regulation.

Section 3. Eligibility Criteria. In order to apply and be considered for a scholarship, an individual **shall** [~~must~~] meet the following criteria:

(1)(a) Be a U.S. citizen or national;

(b) Provide evidence from the U.S. Immigration and Naturalization Service that he:

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

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

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

(2) Be a legal resident of the Commonwealth of Kentucky, as determined in accordance with the Council on Higher Education's policy on classification for fee assessment purposes at 13 KAR **2:045** [~~2:040~~];

(3)(a) Have graduated or be scheduled to graduate from high school within three (3) months of the date of the award and rank in the top ten (10) percent of high school graduating class; or

(b) Have received a certificate of high school equivalency for successfully completing the tests of General Educational Development (GED) with GED test scores equivalent to ranking in the top ten (10) percent of the high school graduates in Kentucky, or nationally, in the academic year for which the eligibility determination is being made

Section 4. Selection Criteria. A panel (representative of parents, teachers, including preschool and special education, and school administrators) shall select recipients using the following criteria:

(1) Special consideration in the selection of at least seventy-five (75) percent of the scholarship recipients shall be given to individuals who state on their application that they:

(a) Intend to teach or provide related services to students with disabilities;

(b) Intend to teach limited English proficient students;

(c) Intend to teach preschool age children;

(d) Intend to teach in schools servicing inner city or rural or geographically isolated areas (as defined by the U.S. Secretary of Education by regulations consistent with the purposes of this section);

(e) Intend to teach in curricular areas or geographic areas where there are demonstrated shortages of qualified teachers; or

(f) Are from disadvantaged backgrounds, including racial and ethnic minorities and individuals with disabilities, and are underrepre-

sented in the teaching profession or in the curricular areas in which they are preparing to teach.

(2) Applicants given special consideration pursuant to subsection (1) of this section shall be ranked in descending order according to total points accumulated using the following criteria:

(a) Cumulative high school grade point average (forty (40) points); and

(b) American College Test composite standard score (thirty-six (36) points); and

(c) As rated by a high school counselor, teacher, or principal:

1. Level of communication skills (nine (9) points); and

2. Ability to become an effective teacher (nine (9) points); and

(d) An additional ten (10) points shall be given to those enrolling in college for the first time as a full-time student.

(3) If funds remain, applicants who do not meet the special consideration criteria prescribed in subsection (1) of this section shall be ranked according to the selection criteria prescribed in subsection (2) of this section, and scholarships shall be offered until funds are exhausted. No more than twenty-five (25) percent of new awards will be made to eligible applicants who do not meet any of the special consideration criteria. [~~Recipient selection shall be made on the basis of the following weighted criteria:~~

~~(1) Cumulative high school grade point average (forty (40) percent);~~

~~(2) American College Test composite standard score (thirty (30) percent);~~

~~(3) Enrollment at a Kentucky institution of higher education (ten (10) percent);~~

~~(4) First time enrollment at an institution of higher education as a full time student (ten (10) percent);~~

~~(5) Level of communication skills rated by a high school counselor, teacher, or principal (four (4) percent);~~

~~(6) Ability to become an effective teacher rated by a high school counselor, teacher, or principal (four (4) percent); and~~

~~(7) Intent to teach in a critical shortage area designated by the secretary pursuant to section 428 of the federal act (two (2) percent).~~]

(4) If funds are insufficient to award all applicants, the scholarships shall first be awarded to those qualifying for awards pursuant to Section 5 of this administrative regulation whose renewal applications are received by the authority by April 1 each year. The deadline for receipt of initial scholarship applications shall be April 15 each year. If two (2) or more applicants are equally ranked, selection between the applicants shall be made on the basis of the date the application is received by the authority.

Section 5. Renewal. Additional academic year awards shall be made annually upon application by an eligible scholar for a maximum of three (3) years of undergraduate study. The criteria to maintain eligibility for renewal of scholarships is governed by 34 CFR 653.41.

Section 6. Award Maximums. The maximum academic year award shall be the lesser of $5,000 or the total cost of attendance as determined by the institution of higher education [~~$5,000~~]. The aggregate maximum [~~of Paul Douglas teacher scholarship awards~~] shall not exceed $20,000 [~~per individual. Awards shall not exceed the scholar's total cost of attendance at the institution of higher education less other financial assistance received pursuant to Title IV of the federal act as determined by the institution~~].

Section 7. Disbursements. Payment shall be made at the beginning of each term, and each disbursement shall be evidenced by an agreement or promissory note, required pursuant to Section 9 of this **administrative** regulation

Section 8. Notifications. Scholars shall notify the authority within thirty (30) days of:

(1) Change in enrollment status;

(2) Cessation of enrollment in a course of study;

(3) Obtaining full-time teaching employment [~~in a qualified teaching service position~~] or cessation of such employment;

(4) Change in deferment status; or

(5) Change of address.

Section 9. Scholarship Agreement. The requirement and content of a scholarship agreement is governed by 34 CFR 653.40, 52 Federal Register 45285, November 25, 1987, as amended at 55 Federal Register 35006, August 27, 1990.

Section 10. Failure to [~~Render Qualified~~] Teach[~~ing Service~~]. The consequences of a scholar's failure to [~~render qualified~~] teach full-time in a public or private nonprofit preschool, elementary, or secondary school, or teach children with disabilities or limited English proficiency in a private nonprofit school [~~ing service~~], including the commencement and rate of repayment and the interest charges, are governed by 34 CFR 653.42(a) through (f), 52 Federal Register 45285, November 25, 1987.

Section 11. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholar's last known address and shall be effective upon mailing. Repayment shall be made in monthly installments as may be necessary to repay all sums due within the time and in amounts required by the scholar's agreement. The authority may agree, in its sole discretion upon a showing of financial hardship by the scholar, to accept repayment in installments less than those required by the scholar's agreement in accordance with a schedule established by the authority. Payments shall first be applied to the earliest unpaid scholarship. Payments shall be applied first to accrued interest and then to principal.

Section 12. Cancellation. The conditions for cancellation of repayment of scholarships are governed by 34 CFR 653.42(k).

Section 13. Records. A participating institution of higher education shall maintain complete and accurate records pertaining to the eligibility, enrollment and academic progress of scholars, the disbursement of funds and institutional charges as may be necessary to audit the disposition of funds hereunder. Such records shall be maintained for at least five (5) years after the scholar ceases to be enrolled at the institution.

Section 14. Refunds. A participating institution of higher education shall refund to the authority, within forty (40) days of a scholar's last date of attendance, any amount attributable to this program which is determined to be due under the institution's refund policy.

Section 15. Information Dissemination and Recruitment. The authority shall disseminate information through high school guidance offices about this program to potential recipients. Participating institutions of higher education shall provide assurances that program information will be disseminated to students enrolled at that institution. Students from low income, economically disadvantaged and minority population groups shall be actively recruited for participation in this program.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: June 29, 1993
FILED WITH LRC: July 15, 1993 at 11 a.m.

KENTUCKY HIGHER EDUCATION ASISTANCE AUTHORITY (As Amended)

11 KAR 10:020. Deferment and reduction of repayment.

RELATES TO: KRS 164.744(2), 164.748(7), (8), 34 CFR 653.21, 653.42

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 34 CFR 653.21, 653.42

NECESSITY AND FUNCTION: Public Law 98-558 established the Carl D. Perkins Scholarship Program, subsequently renamed the Congressional Teacher Scholarship Program and then subsequently renamed the Paul Douglas Teacher Scholarship Program. The Kentucky Higher Education Assistance Authority (authority) administers the program on behalf of the Commonwealth of Kentucky. That law, at 20 USC §1104g [~~1119d-7~~], and federal regulation 34 CFR 653.42(g), (i) and (j), authorize certain exceptions to repayment. 34 CFR 653.42(h) authorizes the authority to prescribe documentation necessary to obtain a deferment. 34 CFR 653.42(d)(2)(ii) authorizes the authority to reduce the required payments upon a showing of inability to repay. 34 CFR 653.21(a)(4) requires the authority to establish and implement policies and procedures necessary to administer repayment under 653.42. This administrative regulation defines "deferment" and establishes conditions under which specified types of deferments may be approved by the authority. This amendment is necessary to conform to amendments to the federal Act enacted by PL 102-325. [~~corrects the name of the program and makes other changes necessary to conform to the format requirements of KRS Chapter 13A.~~]

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

(2) "Deferment" means a temporary waiver of the obligation of a scholar to make payments to the authority, pursuant to one (1) or more agreements or promissory notes executed between the scholar and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the scholar.

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

(4) "Institution of higher education" means a public or private, nonprofit educational institution approved by the secretary under the federal act for participation in the Paul Douglas Scholarship program.

[~~(5) "Qualified teaching service" means to teach on a full-time basis in a public or private, nonprofit preschool, elementary, or secondary school or education program in any state.~~]

(5) [~~(6)~~] The definition of "secretary" is governed by KRS 164.740(20).

(6) [~~(7)~~] "Scholar" means a Paul Douglas Scholarship recipient.

(7) [~~(8)~~] The definition of "scholarship" is governed by KRS 164.740(18).

Section 2. Request for Deferment. The scholar shall request a deferment in writing by submitting complete and accurate information on a form provided by the authority. The scholar's submission of a request for deferment shall constitute authorization for the authority to request and receive verification of facts represented by the scholar as may be deemed necessary by the authority. The scholar shall provide to the authority, at least annually:

(1) For purposes of an enrollment deferment, evidence of enrollment certified by an authorized representative of an institution of higher education;

(2) For purposes of a disability deferment, an affidavit from a licensed physician certifying that the scholar or spouse is temporarily totally disabled;

(3) For purposes of an unemployment deferment, a signed statement that sets forth:

(a) The scholar's current address;

(b)1. The names of school districts to which the scholar has applied for full-time [~~qualified~~] teaching [~~service~~] employment; or

2. The names and addresses of each public or private employment agency, if one is accessible, where the scholar has registered; and

(c) The scholar's agreement to notify the authority within thirty (30) days of the date upon which he obtains either full-time teaching employment [~~in a qualified teaching service position~~] or other full-time employment; or

(4) For purposes of a military deferment, a statement, signed by an authorized representative of the armed forces, evidencing the active duty status and period of enlistment of the scholar.

(5) If, during the period of deferment, a change occurs in the scholar's circumstances that served as the basis for the deferment approved pursuant to this section, then that deferment shall immediately terminate.

Section 3. Effect on Repayment. The consequences of a deferment upon the obligation of a scholar to repay is governed by 34 CFR 653.42(i) and (j), 52 Federal Register 45285, November 25, 1987.

Section 4. Types of Deferments. The circumstances that qualify for deferment are governed by 34 CFR 653.42(g), 52 Federal Register 45285, November 25, 1987.

Section 5. Financial Incapacity. The authority may temporarily reduce the installments required for repayment of a scholarship, at its sole discretion, upon a demonstration that the scholar, due to lack of income or other financial circumstances beyond the scholar's control, is temporarily unable to repay the scholarship in accordance with the regular repayment schedule. The scholar shall request this reduced repayment schedule by submitting a statement, signed by the scholar, on a form provided by the authority, delineating all of the income, expenses, and other financial circumstances of the scholar constituting the asserted financial incapacity.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: June 29, 1993
FILED WITH LRC: July 15, 1993 at 11 a.m.

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts
(As Amended)

45 KAR 1:070. Technical audit bulletins: audit comment guidelines for county officials.

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 August 13 [~~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: August 13, 1993
FILED WITH LRC: August 13, 1993 at noon

FINANCE AND ADMINISTRATION CABINET
Kentucky Board of Medical Licensure
(As Amended)

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) **A waiver from the requirements established by the provisions of this administrative regulation shall not be granted.** **[**~~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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(As Amended)

201 KAR 9:315. HIV/HBV infection control for physicians.

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 administrative regulation is to encourage and promote infection control among all Kentucky physicians.

Section 1. Definitions. (1) "HIV" means the human immunodeficiency virus.

(2) "HBV" means the hepatitis B virus.

(3) "Universal precautions" means the appropriate use of hand and skin washing, protective barriers, care in the use of and disposal of needles and other sharp instruments, and those other techniques recommended in update: universal precautions for prevention of human immunodeficiency virus, hepatitis B virus, and other blood-borne pathogens in health care settings, MMWR 37: 377, 1988, hereby incorporated by reference. A copy may be inspected or copied at the board's office during business hours.

Section 2. HIV or HBV Serostatus Determination. A physician who is HIV or HBV seropositive **[**{**]**and "e" antigen positive**,** **[**}**]** and who performs patient care procedures which pose a significant risk of transmission of HIV or HBV to patients**,** may seek counsel from the Kentucky Board of Medical Licensure.

Section 3. **(1) The Kentucky Board of Medical Licensure may convene a review panel to:**

(a) Monitor the adherence of a HIV or H3V positive physician to:

1. Universal precautions;

2. Clinical competency; and

3. Practice limitations or restrictions established by the review panel to monitor compliance with universal precautions; and

(b) Periodically evaluate the effects of the disease on the competency of the HIV or HBV positive physician.

(2) The review panel shall include the:

(a) Primary care physician of the HIV or HBV positive physician;

(b) A clinical infectious disease specialist; and

(c) An epidemiologist representing the Kentucky Department of Health Services.

(3) The Kentucky Board of Medical Licensure may appoint to the review panel professionals in addition to those specified in subsection (2) of this section. **[**~~Review and Monitoring of HIV or~~

~~HBV Positive Physicians. The Kentucky Board of Medical Licensure shall be empowered to convene a review panel including, but not limited to, the HIV or HBV positive physician's primary care physician, a clinical infectious disease specialist and an epidemiologist representing the Kentucky Department of Health Service. The review panel shall have the following functions:~~

~~(1) Monitoring of the HIV or HBV positive physician's adherence to universal precautions, clinical competency and any practice limitations or restrictions established by the review panel to monitor compliance with universal precautions.~~

~~(2) Periodically evaluate the effects of the disease on the physician's competency.~~]

Section 4. Disciplinary Action. Any physician who does not comply with the requirements of this administrative regulation or the limitations and restrictions established by the review panel, pursuant to regulation, shall be subject to disciplinary action by the Kentucky Board of Medical Licensure as set forth in KRS 311.595.

Section 5. Confidentiality. Information obtained by the Kentucky Board of Medical Licensure pursuant to this regulation is personal in nature as set forth in KRS 61.878(1)(a) and is excluded from the application of KRS 61.870 to 61.884.

ROYCE E. DAWSON, President
APPROVED BY AGENCY: July 12, 1993
FILED WITH LRC: July 14, 1993 at 9 a.m.

TRANSPORTATION CABINET
Office of Aeronautics
Department of Highways
Division of Right-of-Way
(As Amended)

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

RELATES TO: KRS 56.610 to 56.760, 49 CFR Part 24
STATUTORY AUTHORITY: KRS 56.690, 174.080, 183.024, 49 CFR Part 24
NECESSITY AND FUNCTION: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet.

Section 1. Definitions. (1) "Average annual net earnings" means one-half (1/2) of the net earnings of the business or farm operation before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when it is determined by the Transportation Cabinet to be more equitable.

(2) "Business" means any lawful activity, except a farm operation, conducted:

(a) Primarily for the purchase, sale, lease, or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

(b) Primarily for the sale of services to the public; or

(c) Primarily for outdoor advertising display purposes, when the display is required to be moved as a result of the project; or

(d) By a nonprofit organization.

(3) "Comparable replacement dwelling" means a dwelling which is:

(a) Decent, safe and sanitary;

(b) Functionally equivalent to the displacement dwelling;

(c) Adequate in size to accommodate the occupants;

(d) In an area not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment;

(e) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(f) Currently available to the displaced person on the private market; and

(g) Within the financial means of the displaced person.

(4) "Contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs the business or farm operation:

(a) Had average annual gross receipts of not less than $5,000; or

(b) Had average annual net earnings of not less than $1,000; or

(c) Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.

(5) "Control of the property" means that the Transportation Cabinet has paid the owner for the property to be acquired or if acquisition is by condemnation, the Transportation Cabinet has posted the purchase price of the property with the circuit court.

(6) "Decent, safe and sanitary dwelling" means a dwelling which meets local housing and occupancy codes, but at a minimum shall:

(a) Be structurally sound, weathertight and in good repair;

(b) Contain a safe, electrical wiring system adequate for lights and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature of approximately seventy (70) degrees for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink and a toilet, all in good working order and properly connected to a source of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;

(e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor shall have at least two (2) means of egress; and

(f) If the displaced person is an individual with a disability be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displaced person.

(7) "Displaced person" means a person who moves from the real property or moves his personal property from the real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements:

(a) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the initiation of negotiations for, or the acquisition of, the real property in whole or in part; or

(b) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the acquisition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility under this subsection applies only for the purpose of obtaining relocation assistance advisory services and

moving expenses.

(8) "Dwelling" means the place of permanent or customary and usual residence of a person including a single-family house; a single-family unit in a two (2) family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(9) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(10) "Family" means two (2) or more individuals living together in a single-family dwelling unit who:

(a) Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

(b) Are not related by blood or legal ties but live together by mutual consent.

(11) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(12) "Furnished dwelling unit" means a unit in which the furnishings are owned by someone other than the displaced person.

(13) "An individual with a disability" means a person who has a physical or mental impairment that substantially limits one (1) or more major life activities, has a record of an impairment or is regarded as having an impairment.

(14) "Initiation of negotiations" means the delivery of the initial written offer of compensation to purchase the real property by the Transportation Cabinet to the owner or the owner's representative. If the Transportation Cabinet issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the date of "initiation of negotiations" is the date of the actual move of the person from the property.

(15) "Mortgage" means the classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the Commonwealth of Kentucky together with the credit instrument, if applicable.

(16) "Net earnings" means any compensation obtained from the business or farm operation by its owner or the owner's spouse the owner's [~~and~~] dependents.

(17) "No duplication of payment" means that no person shall receive any payment under this administrative regulation if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as the payment under this administrative regulation.

(18) "Nonprofit organization" means an organization incorporated in the Commonwealth of Kentucky as a nonprofit organization under the provisions of KRS Chapter 273 and which is exempt from paying federal income taxes under the Internal Revenue Code (26 USC 501).

(19) "Notice of intent to acquire" or "notice of eligibility for relocation assistance" means written notice furnished to a person who is to be displaced, which establishes eligibility for relocation benefits prior to initiation of negotiations.

(20) "Owner of a dwelling" means a person who has purchased or holds any of the following interest in the real property:

(a) Fee title, a life estate, a ninety-nine (99) year lease, or a lease including any options, for extension with at least fifty (50) years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) A contract to purchase any of the interests or estates described in paragraph (a) or (b) of this subsection; or

(d) Any other interest, including a partial interest, which warrants consideration as ownership.

(21) "Person" means any individual, family, partnership, corporation, or association.

(22) "Persons not displaced" means but is not limited to the following:

(a) One who moves before the initiation of negotiations, unless the Transportation Cabinet determines that the person was displaced as a direct result of the project; or

(b) One who initially occupies the property after the date of its acquisition by the Transportation Cabinet; or

(c) One who occupies the property for the purpose of obtaining assistance under this administrative regulation; or

(d) One who the Transportation Cabinet determines is not displaced as a direct result of partial acquisition of the property; or

(e) An owner-occupant who voluntarily conveys his property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Transportation Cabinet does not intend to acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the provisions of this administrative regulation; or

(f) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law; or

(g) A person determined by the Transportation Cabinet to not be displaced because of another special condition.

(23) "Purchases a dwelling" means, in addition to actually buying a dwelling, the following:

(a) Purchases and rehabilitates a substandard dwelling; or

(b) Relocates a dwelling which he owns or purchases; or

(c) Constructs a dwelling on a site he owns or purchases; or

(d) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(e) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(24) "Real property" means land, and generally whatever is erected or growing upon or affixed to land.

(25) "Salvage value" means the probable sale price of an item if offered for sale on the condition that it is to be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which the item is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(26) "Small business" means a business having [~~at least one (1) but~~] not more than 500 employees working at the site being acquired or displaced by the project where the site is the location of economic activity.

(27) "Subsequent occupant" means any person who did not occupy the property at the time negotiations began for acquisition of the property and who is in occupancy at the time the property is acquired and who subsequently moves from the real property. Relocation assistance payments made to a subsequent occupant shall be through the provisions of Last Resort Housing in Section 29 of this regulation.

(28) "Tenant" means a person who has the temporary use and occupancy of real property owned by another.

(29) "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Transportation Cabinet has determined has little or no value or utility to the owner.

(30) "Unlawful occupancy" means that a person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Transportation Cabinet to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property. The Transportation Cabinet may, at its discretion, consider a squatter

to be in lawful occupancy.

(31) "Utility costs" means expenses for heat, light, water, and sewer.

Section 2. Applicability. (1) The payments and services set forth in this administrative regulation which involve a Transportation Cabinet project in which a person, business, farm operation or nonprofit organization is required to relocate or discontinue operation shall be made regardless of whether federal funds are used or not used in the project.

(2) If the Transportation Cabinet acquires real property on behalf of another agency that agency may authorize the cabinet to follow the provisions of this administrative regulation.

Section 3. Relocation Notices - General. (1) Each relocation notice provided by the Transportation Cabinet shall be personally delivered or sent by certified or registered mail, return receipt requested.

(2) As soon as feasible, a person scheduled to be displaced shall be notified of the possibility of his displacement. He shall also be furnished with a general written description of the relocation program which gives at least the following information:

(a) Informs the person that he may be displaced because of the project and generally describes any relocation payment for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment;

(b) Indicates that any person displaced shall be given reasonable relocation advisory services to help the person relocate successfully including housing referrals, help in filing payment claims and other necessary assistance;

(c) Informs any displaced person lawfully occupying the property that he shall not be required to move without at least ninety (90) days advance notice except under the most unusual of circumstances;

(d) Describes the person's right to appeal the determination of eligibility for, or the amount of, any relocation payment for which the person may be eligible;

(e) Informs the person that in order to be eligible for benefits he is required to occupy the property at the time of initiation of negotiations and includes a definition of initiation of negotiations; and

(f) Informs the displaced person that he cannot be required to move permanently unless at least one (1) comparable replacement dwelling has been made available.

(3) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for acquisition of the occupied property. At this time the Transportation Cabinet shall notify each occupant or family to be displaced in writing of his eligibility for relocation assistance.

(4) No lawful occupant shall be required to move unless he has received at least ninety (90) days advance written notice of the earliest date by which he may be required to move. Only in unusual circumstances, such as a substantial danger to the person's health or safety, shall an occupant be required to vacate the property on less than ninety (90) days advance written notice.

(5)(a) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice.

(b) The notice shall be either:

1. A specific date which is the earliest date by which he shall be required to move; or

2. A statement that before the displaced person is required to move from the property, he shall be given a thirty (30) day written notice specifying the date by which the property shall be vacated.

(6)(a) The Transportation Cabinet may issue a notice to a displaced person specifying the date by which he is required to vacate the acquired property, if:

1. The Transportation Cabinet has gained control of the property to be acquired;

2. Sixty (60) or more days have passed since the issuance of a ninety (90) day notice; and

3. Comparable replacement housing has been made available to the displaced person.

(b) The required vacation date shall be at least thirty (30) days after the notice is issued.

Section 4. Notice at Initiation of Negotiations. (1) The Transportation Cabinet shall furnish an owner-occupant of 180 days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of replacement housing computation and eligibility requirements to receive the payment;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The possibility of his eligibility to receive an increased interest payment, or payment of incidental expenses incurred in the purchase of replacement housing;

(d) His option to rent rather than purchase replacement housing;

(e) The availability of relocation assistance advisory services and how they may be obtained;

(f) A ninety (90) day notice; and

(g) His right to appeal.

(2) The Transportation Cabinet shall furnish an owner-occupant of less than 180 days no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of a rental replacement housing payment and the maximum amount of a down payment for the purchase of replacement housing, as well as the requirements to receive these payments;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice; and

(f) His right to appeal.

(3) The Transportation Cabinet shall furnish a tenant-occupant of ninety (90) days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The amount of rental and purchase replacement housing payments and the eligibility requirements to receive these payments;

(b) The address of the comparable housing used to compute the rental and replacement housing payments;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice;

(f) His right to appeal; and

(g) The date of the initiation of negotiations for the property.

(4) The Transportation Cabinet shall furnish in writing to a subsequent tenant-occupant within seven (7) working days from the date the cabinet acquires the property the following information:

(a) His eligibility to receive moving expense payments;

(b) The availability of relocation advisory services and how they may be obtained;

(c) Assurance that comparable replacement housing is available within his financial means; and

(d) The ninety (90) day notice to vacate. This notice shall specify the date by which the property shall be vacated, and shall not be issued until comparable housing is available.

Section 5. Alternate Notices. (1) The Transportation Cabinet may specify an alternative notification procedure to those established in

Sections 3 and 4 of this administrative regulation if there are insufficient rental units available for the tenant-occupants of the acquired property.

(2) If the Transportation Cabinet determines that an alternative notification procedures will be used, it shall not be required to make the replacement housing payment offer to the displaced tenants within the seven (7) working days specified in Section 4(3) of this administrative regulation.

(3) The alternate notification procedure used by the Transportation Cabinet shall be as follows:

(a) Contact the owner and make the fair market value offer for the property;

(b) Within seven (7) working days, contact the tenants and give each a written statement which shall include:

1. The date of initiation of negotiations for the parcel; and

2. An explanation of the eligibility requirements to receive a rental replacement housing payment, or a down payment.

(c) At the time the replacement housing payment is computed and the written statement required in paragraph (b) of this subsection is given the tenant, the ninety (90) day notice shall be included. The cabinet shall use the procedure in issuing the thirty (30) day vacation written notice as specified in Section 4 of this administrative regulation.

(d) The thirty (30) day notice to vacate shall not be required if an occupant moves of his own volition prior to the date the Transportation Cabinet would have issued the notice.

(4) A notice of intent to acquire the property shall be furnished to an owner or tenant only if it becomes necessary to establish eligibility requirements prior to negotiations on the parcel. This notice shall not be issued until acquisition has been authorized for the project. The notice of intent to acquire the property shall contain the following:

(a) Statement of eligibility and any restrictions on eligibility;

(b) The anticipated date of the initiation of negotiations for acquisition of the property; and

(c) How additional information regarding relocation payments and services can be obtained.

(5) If a notice of intent to acquire the property is given to an owner, the tenant shall be issued the notice within fifteen (15) days. The owner shall be given a copy of the notice issued to the tenant.

(6)(a) When the Transportation Cabinet acquiring property results in a property being landlocked, the occupant of the landlocked property shall be considered displaced. The displaced occupant shall:

1. Be eligible for relocation assistance; and

2. Have one (1) year to obtain an occupied decent, safe and sanitary replacement housing.

(b) The vacation date shall begin to run from either the date the Transportation Cabinet:

1. Makes a payment for damages to the nonresident owner of the property; or

2. Posts payment for damages in court.

Section 6. Availability of Comparable Replacement Dwelling Prior to Displacement. (1) No person to be displaced shall be required to move from his dwelling unless at least one (1) comparable replacement dwelling has been made available to the person. When possible, three (3) or more comparable replacement dwellings shall be made available. A comparable replacement dwelling shall be considered to have been made available to a person if:

(a) The person is informed of its location;

(b) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(c) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(2) The requirements of subsection (1) of this section may be waived if the displaced person is required to move in case of an emergency situation which shall include:

(a) A major disaster as described in Section 102(c) of the National Disaster Relief Act of 1974;

(b) A presidentially declared national emergency;

(c) Highway slides or floods; or

(d) When continued occupancy would constitute a substantial danger to the health or safety or the occupants or the public.

(3) If a person is required by the Transportation Cabinet to relocate for a temporary period due to an emergency, the Transportation Cabinet shall do the following:

(a) Take the necessary steps to assure the person is temporarily relocated to decent, safe and sanitary housing;

(b) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in rent and utility costs incurred in connection with the temporary relocation; and

(c) Make available to the displaced person as soon as feasible at least one (1) comparable replacement dwelling.

(d) In the case of an emergency relocation, the date of displacement shall be the date the person moves from the temporarily-occupied dwelling. This date shall be used in:

1. Filing a claim for relocation assistance; and

2. Determining eligibility requirements for a relocation payment.

Section 7. Relocation Advisory Services. (1) The Transportation Cabinet Advisory Services Program shall include the measures, facilities, and services that may be necessary or appropriate in order to:

(a) Personally interview each family or person to be displaced to:

1. Determine the person's relocation needs and preferences;

2. Explain the relocation payments; and

3. Explain other assistance for which the person may be eligible, including requirements for obtaining the assistance;

(b) Provide current and continuing information on the availability, price and rental cost of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one (1) comparable replacement dwelling is made available;

(c) In order that the displaced person is made aware of the amount of the replacement housing payment to which he may be entitled, inform the displaced person, in writing, of:

1. The specific comparable replacement dwelling;

2. The price and rent used as a basis for establishing the upper limit of the replacement housing payment; and

3. The basis for the determination;

(d) If feasible, inspect the comparable housing prior to its being made available to assure that it is decent, safe and sanitary;

(e) It shall be the policy of the Transportation Cabinet to provide a minority displaced person an opportunity to elect relocation to a replacement dwelling which is located outside an area of minority concentration if:

1. It would not require the Transportation Cabinet to pay a larger relocation payment than is required by this administrative regulation; and

2. It is within the financial means of the minority displaced person;

(f) Offer the displaced person transportation to inspect housing to which he is referred;

(g) Provide current and continuing information on the availability, location purchase price, and rental cost of comparable and suitable commercial and farm properties. Assist any person displaced from a business, farm operation, or nonprofit organization to obtain and become established in a suitable replacement location;

(h) Minimize hardships to persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and other help that may be appropriate;

(i) Supply persons to be displaced with information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be

displaced;

(j) Advise a displaced person that no payments received under the relocation assistance program shall be considered as income for the purposes of:

1. The federal Internal Revenue Code; or

2. Determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal or state law; and

(k) Maintain contact with other governmental agencies to determine the extent of other programs which might affect the Transportation Cabinet relocation program and the availability of housing resources.

(2) The amount and extent of the relocation advisory services rendered shall be determined by the needs of the displaced person.

(3) The Transportation Cabinet may offer relocation advisory services to a person occupying property adjacent to the real property acquired if that person is caused substantial economic injury because of the cabinet's acquisition of the real property.

(4) The Transportation Cabinet shall coordinate relocation activities with project work and other displacement-causing activities to ensure that persons displaced receive consistent treatment and duplication of functions is minimized.

Section 8. Claims for Relocation Assistance Payments. (1)(a) Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred.

(b) A displaced person shall be provided reasonable assistance in completing and filing a claim for payment.

(c) The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required.

(d) Payment for a relocation assistance claim shall ordinarily be made only after:

1. The displaced person has moved or after closing; and

2. As soon as feasible following receipt of sufficient documentation to support the claim.

(e) The payment for a claim may be processed in advance of a move or closing but shall not be made until it can be reasonably expected that the objective of the payment has been or is to be accomplished.

(2) All claims for a relocation payment shall be filed based on the following unless the time limits have been waived for good cause by the Transportation Cabinet:

(a) For tenants, within eighteen (18) months after the date of displacement; or

(b) For owners, within eighteen (18) months of the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(3) If two (2) or more occupants of one (1) household of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if it is determined that two (2) or more occupants maintained separate households within the same dwelling, the occupants shall have separate entitlements to relocation payments.

(4) If a person to be displaced owes rent to the Transportation Cabinet, the amount owed may be deducted from his relocation assistance payment unless the deduction would prevent the displaced person from obtaining comparable replacement housing. The Transportation Cabinet shall not withhold any part of a relocation assistance payment to a displaced person to satisfy an obligation to any other creditor.

(5) By written agreement between the displaced person, the mover and the Transportation Cabinet, the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover. The displaced person shall initially make this request on forms prescribed and furnished by the Transportation Cabinet.

(6) If the Transportation Cabinet denies a claim of eligibility for or the amount of a payment, the claimant shall be promptly notified in writing of the reason for denying the claim and his right to appeal.

Section 9. Moving and Related Expense Payments-General. Moving and related expense payments are types of relocation assistance payments. Any eligible individual, family, business, farm operation or nonprofit organization displaced by a Transportation Cabinet project and who qualifies as a displaced person is entitled to payment of his actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary.

(1) To be eligible for moving and related expense payments the displaced person shall:

(a) Be in legal occupancy at the initiation of negotiations for the real property or at the time the property is acquired, in whole or in part by the Transportation Cabinet or at the time he is given a written notice by the Transportation Cabinet of intent to acquire the real property; and

(b) Move from the real property, or move his personal property from the real property subsequent to the dates established in paragraph (a) of this subsection.

(2) If the acquisition of real property used for a business, farm operation, or nonprofit organization causes a person to vacate a dwelling or other real property not acquired by the Transportation Cabinet, the additional moving cost shall be eligible for reimbursement. Also, if it is necessary to move personal property that is legally located within the acquired property, the cost shall be eligible for reimbursement.

(3) A second move for a displaced person shall not be automatically authorized, nor generally eligible for payment. However, under exceptional circumstances, a second moving payment may be made. Prior to authorizing a second move, the Transportation Cabinet shall consider all special circumstances.

(4) The displaced person shall be informed in writing as soon as possible after the initiation of negotiations of the following requirements:

(a) The displaced person shall provide the Transportation Cabinet reasonable advance notice of the approximate date of the start of the move or disposition of his personal property and a list of the items to be moved; and

(b) The displaced person shall allow the Transportation Cabinet to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and allow the cabinet to monitor the move.

Section 10. Moving and Related Expense Payments for Residential Moves. (1) A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person:

(a) Is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family.

(b) Has the option to receive reimbursement on the basis of actual, reasonable expenses, or from the fixed-rate schedule listed in subsection (5) of this section which is based on the number of rooms of personal property.

(2) An owner-occupant of a multiple-family dwelling may be entitled to a moving payment for a residential move for himself and moving payments for his personal property located in other units.

(3) In order to determine that more than one (1) household exists in a single dwelling unit, each family unit shall have separate baths, kitchen areas and bedrooms.

(a) Two (2) or more families occupying the same dwelling unit, who are required to relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate

schedule.

(b) Two (2) or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule. A fixed-rate schedule move payment shall be based on the number of rooms actually occupied by each family, plus community rooms utilized by each family.

(c) Two (2) or more individuals who occupy the same dwelling unit are considered to be a single family and payments shall be made accordingly.

(4) When an owner retains his dwelling, the cost of moving it onto a different site is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property, the cost of moving the personal property may be considered eligible for reimbursement. Payments in these cases shall be from the fixed-rate schedule.

(5) If the displaced person elects to move on an actual cost basis, the following expenses are eligible for payment:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of the personal property for a period not to exceed twelve (12) months, unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the property in connection with the move and necessary storage;

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and

(g) Other moving related expenses not listed as ineligible in Section 13 of this regulation but which are determined by the Transportation Cabinet to be reasonable and necessary.

(6)(a) The displaced person may elect to move by the use of a licensed commercial mover and receive reimbursement for the actual, reasonable expenses. These expenses shall be supported by receipted bills.

(b) The Transportation Cabinet may furnish the displaced person a list of licensed movers in the area.

(c) The displaced person shall select one (1) mover and the Transportation Cabinet shall select one (1) mover.

(d) The Transportation Cabinet shall:

1. Obtain from both of the selected movers an estimate of the moving costs including any necessary utility service connections.

2. Base payment on the lower estimate.

(e) The displaced person may hire either company.

(5) The displaced person, including a person displaced from a seasonal residence, may elect to move his personal property according to the fixed-rate schedule. The separate items authorized under commercial and self moves have been included in establishing the fixed-rate schedule and no additional moving payments shall be authorized. The room count of furniture shall be based on the actual number of furnished rooms, plus basements, attics, garages and out buildings if such spaces contain sufficient personality as to constitute a room. Payment shall be based on the following schedule:

1 Room = $250	5 Rooms = $ 750
2 Rooms = $400	6 Rooms = $ 850
3 Rooms = $550	7 Rooms = $ 950
4 Rooms = $650	8 Rooms = $1050
	Each Additional Room = $100

(6) If the displaced person lives in a furnished dwelling unit, he shall be paid moving costs for moving his personal property according to the following schedule:

First Room = $225

Each Additional Room = $35

(7) The moving expenses of a person with minimal personal possessions who occupies a dormitory style room shared by two (2) or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to fifty (50) dollars.

Section 11. Moving and Related Expense Payments for Business, Farm Operations or Nonprofit Organizations. The owner of a displaced business, farm operation or nonprofit organization is entitled to receive a payment for moving and related expenses.

(1) Any business, farm operation or nonprofit organization which qualifies as a displaced person is entitled to payment for the actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary, including expenses for the following:

(a) Transportation of personal property. Transportation costs for a distance beyond fifty (50) miles are ineligible, unless it is determined by the Transportation Cabinet that the relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property and including connection to utilities available nearby. Also, included are modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded);

(d) Storage of the personal property for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the personal property in connection with the move and necessary storage;

(f) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be prorated, based on the remaining useful life of the existing license, permit or certification;

(g) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(h) Professional services necessary for planning the move of the personal property; moving the personal property; and installing the relocated personal property at the replacement location.

(2) The owner of a business, farm operation or nonprofit organization, may be paid the actual reasonable cost of moving his personal property as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be

moved. The displaced person shall certify that the items are to actually be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers when a replacement property has been found. The payment of moving expenses shall be authorized only on the basis of the lower of the bids.

(3) The owner of the business, farm operation or nonprofit organization, may elect to move himself. Under this circumstance the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items actually are to be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers after a replacement property has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that all property was moved to the new location.

(4) If the cost of the move is not likely to exceed $5,000, a single estimate may be prepared by a qualified staff employee of the Transportation Cabinet other than the person preparing the claim.

(5) When the Transportation Cabinet obtains bids for a business, farm operation or nonprofit organization move, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(6) If it is necessary to reprint available stationery because the business, farm operation or nonprofit organization, has been relocated, the Transportation Cabinet shall pay the actual cost for reprinting the number and type of item to be replaced. Payment shall be made for only the number of each item approved in advance of the reprinting by the Transportation Cabinet. The claim for payment shall be documented by receipted bills from the provider.

(7) If it is necessary to reletter a sign that has been made obsolete as a result of the move, if possible, only that portion of the sign which changes shall be eligible to be relettered. However, if necessary, the cost of relettering the complete sign shall be an eligible expense. The payment request shall be documented by receipted bills from the provider. Approval of the relettering shall be obtained from the Transportation Cabinet in advance of work being performed.

(8)(a) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location.

(b) Payment shall be limited to $1,000.

(c) The items for which an invoice may be submitted include:

1. Transportation;

2. Lodging and meals away from home;

3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(d) The claim for payment shall be documented by receipted bills for meals and lodging when away from home and an affidavit shall be required for mileage and time. The affidavit shall show:

1. Persons contacted;

2. Places visited;

3. Activity involved; and

4. Basis for the hourly rate charged for time.

(9)(a) Payment of actual direct losses of tangible personal property may be made when the business, farm operation or nonprofit organization owner moves or discontinues his operation. Payment for actual direct losses of tangible personal property may be made only after a bona fide effort has been made by the owner to sell the items involved. The payment shall consist of the lesser of:

1. The fair market value of the item for continued use at the displacement site less the proceeds from its sale.

a. The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary.

b. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price; or

2. The estimated cost of moving the item, with no allowance for storage. If the business, farm operation, or nonprofit organization is discontinued, the estimate shall be based on a move of fifty (50) miles;

(b) The prompt purchase of substitute personal property to replace an item not to be moved in a business, farm operation or nonprofit organization move, yet which performs a comparable function at the replacement site. Payment shall be the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost for the move is $5,000 or less, the estimated cost may be based on a single estimate prepared by a qualified Transportation Cabinet employee.

(c) If no offers are received for the property at the sale and the property is abandoned, payment for the actual direct loss of that item shall not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item fifty (50) miles, whichever is less, plus the reasonable costs of the attempted sale, irrespective of the cost to the Transportation Cabinet of removing the item.

(d) If personal property is abandoned with no effort made by the owner to dispose of the property by sale, the owner shall not be entitled to moving expenses, or losses, for the item involved.

(e) The cost of removal by the Transportation Cabinet of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(f) The sale price, if any, and the actual reasonable costs of advertising and conducting the sale shall be supported by a copy of the bill of sale or similar documents, and by copies of any advertisements, offers to sell, auction records, and other data which support the sale.

(g) The direct loss payment for an advertising sign which is personal property shall be the lesser of the depreciated reproduction cost of the sign less the proceeds from its sale; or the estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.

(10) An owner of a discontinued or relocated business otherwise eligible for payment of moving expenses may choose to receive a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.

(a) The amount of the fixed payment shall equal the average annual net earnings for the business **but** [~~as long as the amount is~~] not [~~be~~] less than $1,000 and not [~~ner~~] more than $20,000.

(b) For an owner of a business to be entitled to this payment, it shall be determined that:

1. The business owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move and the business vacates or relocates

from the displacement site;

2. The business cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;

3. The business is not part of a commercial enterprise having more than three (3) other entitles which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;

4. The business is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others; and

5. The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement. The displaced person shall furnish the Transportation Cabinet copies of his income tax returns and other proof of net earnings.

(c) In determining whether two (2) or more displaced legal entitles constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and

4. The same person or closely related persons own, control, or manage the affairs of the entities.

(11) An owner of a displaced farm operation may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.

(a) The amount of the fixed payment shall equal the average annual net earnings for the farm operation **but** [~~as long as the amount is~~] [~~This payment shall~~] not [~~be~~] less than $1,000 and not [~~nor~~] more than $20,000.

(b) In the case of partial acquisition of land which was a farm operation before the acquisition, a fixed payment may be made only if the Transportation Cabinet determines that:

1. [~~(a)~~] The farm operation contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement;

2. [~~(b)~~] Acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

3. [~~(c)~~] The partial acquisition caused a substantial change in the nature of the farm operation.

(12)(a) A displaced nonprofit organization may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.

(b) The payment shall not be less than $1,000 nor more than $20,000.

(c) Any request for payment in excess of $1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition.

(d) The amount to be used in determining the payment is the average of two (2) years annual gross revenues less administrative expenses.

(e) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fund raising activities.

(f) Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses. Operating expenses for carrying out the purpose of the nonprofit organization are not included in administrative expenses.

(g) Monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 12. Miscellaneous Moves. There are entities to be relocated that meet none of the definitions of a business, a farm operation or a nonprofit organization. The moving expenses in these instances shall usually be paid as a self-move. Examples of moves of this type are:

(1) Partial taking of a farm or residential lot on which only a shed, barn or garage contains personal property;

(2) Acquisition of a tenant-occupied residence if the owner has some personal property in the building; or

(3) Acquisition of a tenant-occupied service station where the owner or distributor has personal property to be moved.

Section 13. Ineligible Moving and Related Expenses. A displaced person shall not be entitled to payment for the following:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

(2) Interest on a loan to cover moving expenses;

(3) Loss of good will;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location (except as provided for under reestablishment expenses);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Transportation Cabinet;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization except as provided for under actual reasonable moving expenses and reestablishment expenses; or

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

Section 14. Reestablishment Expenses of Businesses, Farm Operations or Nonprofit Organizations. A small business, farm operation or nonprofit organization may be eligible to receive a payment not to exceed $10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation or nonprofit organization at the replacement site. Eligibility for this payment shall be contingent upon the following:

(1) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include:

(a) Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance;

(b) Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;

(c) Construction and installation costs [~~not to exceed $1,500~~] for exterior signing to advertise the business;

(d) Provision of utilities from the right-of-way to improvements on the replacement site;

(e) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;

(f) Licenses, fees and permits when not paid as a part of moving expenses;

(g) Feasibility surveys, soil testing and marketing studies;

(h) Advertisement of the replacement location [~~not to exceed $1,500~~];

(i) Professional services in connection with the purchase or lease of a replacement site;

(j) Increased cost of operation during the first two (2) years at the replacement site [~~not to exceed $6,000~~] for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees;

(k) Impact fees or one (1) time assessments for anticipated heavy utility usage; and

(l) Other items determined by the Transportation Cabinet to be

essential to the reestablishment of the business.

(2) Expenses in excess of the maximums set forth in subsection (1)(c), (h) and (j) of this section may be considered eligible if large and legitimate disparities exist between the cost of operation at the displacement site and cost of operation at an otherwise similar replacement site. In these cases, the limitations for reimbursement of the cost may be waived by the Transportation Cabinet, but in no case shall the total costs payable for reestablishment expenses exceed the $10,000 maximum.

(3) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done in order to determine what repair or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet the itemized paid receipts for those reestablishment expenses he has incurred.

(4) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(a) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures;

(b) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operations;

(c) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in subsection (1)(e) of this section;

(d) Interest on money borrowed to make the move or purchase the replacement property;

(e) Payment to a part-time business in the home which does not contribute materially to the household income.

(5) Sites occupied solely by outdoor advertising signs, devices or displays shall not qualify as a business for reestablishment expenses under the provisions of this section.

Section 15. Replacement Housing Payments - General. (1) It shall be the policy of the Transportation Cabinet to consistently apply the provisions of this administrative regulation relating to eligibility for replacement housing payments to housing situations not specifically provided for in this administrative regulation. Displaced persons may include individuals or families displaced from condominiums or cooperative apartments.

(2) The displaced individual or family shall not be required to relocate to the same occupancy (owner or tenant) status in order to receive the replacement housing payment, but has other options based on his ownership status and tenure of occupancy.

(3)(a) The Transportation Cabinet shall not participate in more than one (1) replacement housing payment for each dwelling unit, except in the case of multifamily occupancy of a single family dwelling as described in Section 17 of this regulation.

(b) The claim for payment shall be filed with the cabinet no more than eighteen (18) months after the date of displacement for tenants.

(c) For owners, the claim for payment shall be filed no more than eighteen (18) months after the date of:

1. Displacement; or

2. The final payment for the acquisition of real property, whichever is later.

(d) Before the payment is made to the displaced person, the Transportation Cabinet shall determine that the replacement dwelling is decent, safe and sanitary.

(4)(a) If a displaced person qualifies for a replacement housing payment, but has not yet purchased or occupied a suitable replacement dwelling, provided he purchases and occupies the inspected dwelling within the one (1) year time limit, the Transportation Cabinet shall provide a written or oral certification that the displaced person is eligible for the payment of a specific amount

(b) The Transportation Cabinet shall release this certification only:

1. Upon the request of the displaced person who is purchasing the dwelling;

2. After inspecting the proposed dwelling; and

3. Upon finding that the dwelling is decent, safe and sanitary.

(c) The certification shall include the address of the property inspected and the amount of money the displaced person is required to spend for the replacement property in order to receive the full amount of his replacement housing payment.

(5)(a) Replacement housing payments may be made directly:

1. To the relocated individual or family; or

2. Upon written instructions from the displaced person:

a. Directly to the lessor for rent; or

b. Directly to the seller for use toward the purchase of a dwelling.

(b) This written instruction from the displaced person shall be submitted with the application for payment.

(c) The Transportation Cabinet shall make the replacement housing payment into an escrow account if:

1. The displaced person has made a specific request in the application; and

2. The applicant otherwise qualifies for a replacement housing payment.

(6)(a) The Transportation Cabinet shall determine the probable selling price of a comparable dwelling by analyzing at least three (3) comparable dwellings representative of the dwelling unit to be acquired which are available on the private market.

(b) Less than three (3) comparable dwellings may only be used for this determination when sufficient comparable dwellings are not available.

(c) Selection of comparable dwellings and computation of payment shall be made by a qualified Transportation Cabinet employee other than the appraiser or review appraiser on the parcel involved.

(d) The selected comparable dwellings shall be the most nearly comparable available and equal to or better than the subject property.

(7)(a) If the lapse of time between obtaining a listing of an available dwelling which is used to compute a replacement housing payment and the offer of the replacement housing payment amount to the displaced person exceeds thirty (30) days, the Transportation Cabinet shall determine that the property is still on the market.

(b) If a check of the market reveals the comparable dwelling relied upon is not available, a new comparable dwelling shall be selected and a new replacement housing payment computed.

(8) An adjustment shall be made to the asking price of the selected comparable dwelling only when the market reflects a difference of more than five (5) percent in the asking price and the sale price of comparable housing in the area. To determine whether an adjustment to the asking price is needed the Transportation Cabinet may contact realtors or use multiple listings books for recent sales.

(9)(a) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (for example, the site is significantly smaller or does not contain a swimming pool), the value of the attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(b) If an uneconomic remnant of land remains after the Transportation Cabinet acquired only a portion of a tract of property and the owner of the remaining property refuses to sell it to the Transportation Cabinet, the fair market value of the uneconomic remnant shall be deducted from the before value of the displacement dwelling for purposes of computing the replacement housing payment.

(10) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(11) A person who occupies a property for less than ninety (90) days before initiation of negotiations or who occupies the property subsequent to the initiation of negotiations but before the property is

acquired is entitled to moving expenses and advisory services. Any replacement housing payment if applicable shall be made under the provisions of Section 29 of this regulation.

(12) A person shall not be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this administrative regulation for a reason beyond his control, such as:

(a) A disaster;

(b) An emergency; or

(c) An imminent threat to the public health or welfare as determined by:

1. The President;

2. The federal agency funding the project; or

3. The Transportation Cabinet; or

(d) A delay in the construction of the replacement dwelling;

(e) Military reserve duty; or

(f) A hospital stay.

(13)(a) A displaced tenant who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a purchase or down payment assistance payment if he meets the eligibility criteria for the payments, including purchase and occupancy within the prescribed one (1) year period.

(b) Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

(c) A displaced owner-occupant who originally rents a replacement dwelling and receives a rent supplement payment is eligible to receive a replacement housing payment, if he purchases and occupies a dwelling within the prescribed one (1) year.

(14)(a) A replacement housing payment is personal to the displaced person and upon his death, the undisbursed portion of any payment shall not be paid to the heirs or assigns, except that the amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(b) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy a decent, safe and sanitary replacement dwelling.

(c) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(15) In order to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when the Transportation Cabinet computes the replacement housing payment.

Section 16. Replacement Housing Payments - Partial Tract Acquisition. (1)(a) If the acquired dwelling is located on a tract typical in size for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling on a tract typical in size for the area, less the difference in the before and after values of the residential property.

(b) This difference represents the acquisition price and shall include any damages to the portion of the tract not acquired by the Transportation Cabinet.

(2) If the acquired dwelling is located on a tract larger in size than typical for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the tract which is a typical size for computation of the maximum replacement housing payment. The maximum housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total tract.

(3)(a) If the acquired dwelling is located on a farm and if only a portion of the farm is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the farm which is a typical size tract for a residential property in the area for computation of the maximum replacement housing payment.

(b) The maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total farm.

(4) If an outbuilding is located on the tract to be acquired and if the outbuilding is used for nonresidential purposes such as corncribs or implement storage, its value shall not be included in the computation of the replacement housing payment.

(5) If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the difference in the before and after value of the typical size homesite using the value indicated by the higher and better use, or if larger than typical, the difference in the value before and after a portion is carved out. This difference shall represent the acquisition price.

Section 17. Replacement Housing Payments - Multiple Occupancy of Same Dwelling Unit. (1)(a) If two (2) or more eligible families occupy the same single-family dwelling unit, and a comparable replacement dwelling is available, the occupants are entitled to only one (1) replacement housing or rent supplement payment.

(b) If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family shall be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants.

(c) For owner-occupants the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

(2)(a) If two (2) or more eligible individuals occupy the same single-family dwelling unit, they are considered one (1) family for replacement housing payment or rent supplement purposes.

(b) If all individuals do not relocate to decent, safe and sanitary housing, the Transportation Cabinet shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a proportional share of the payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(3) If a displaced individual or family occupies living quarters on the same premises as a displaced business, farm or nonprofit organization, the individual or family is a separate displaced person for purposes of determining entitlement to relocation payments. The Transportation Cabinet shall compute the replacement housing payment for joint residential and business use properties as follows:

(a) If the owner occupies living quarters in the building the replacement housing payment shall be determined by establishing the difference in the before and after value of the land using the appraised value (if acquiring the entire tract the cabinet shall use the total land value) adding the value of the living quarters portion of the building and then subtracting the total from the most comparable property to the living quarters available for sale on the market.

(b) If a tenant occupies living quarters in the building to be acquired, the replacement housing payment shall be determined by subtracting the base monthly rent of the displaced tenant in the acquired dwelling as determined in Section 23(2) of this regulation from the amount the displaced person actually pays per month for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the

estimated average monthly utilities. That amount shall be multiplied by forty-two (42) to establish the replacement housing payment.

(c) A displaced person eligible for a rental replacement housing payment under Section 23(1) of this regulation may receive a down payment assistance payment not to exceed $5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(4) The procedure for computing replacement housing payment amounts to an owner of a multifamily dwelling who occupies one (1) unit is as follows:

(a) The comparable dwellings considered in the computation shall be the same as that acquired, that is, if the property is a triplex, then the comparable dwellings shall be triplexes. If comparable dwellings are not available, structures of the next lowest density shall be used. If there are not any available comparable multifamily structures to be found, the comparison of the owner's living unit shall be to a single-family residence. A higher density structure shall never be used as a comparable structure.

(b)1. The value of the owner's unit shall be used as the basis for the replacement housing payment determination, not the entire fair market value of the property being acquired. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property.

2. If the comparable housing is a triplex:

a. The replacement housing payment is based on the value of only one (1) of the three (3) units;

b. A duplex, the payment is based on the value of only one (1) of the two (2) units;

c. A single-family dwelling, the payment is based on the entire value of the dwelling.

3. The other living units of a multifamily dwelling shall not be included in the value of a comparable unit because these are considered as income producing and not part of the owner's personal living area.

Section 18. Replacement Housing Payments - Owner-Occupants of 180 Days or More. (1) A displaced owner-occupant may receive replacement housing payments if the displaced person has actually owned and occupied the displacement dwelling for 180 days or more immediately prior to the initiation of negotiations and if he purchases and occupies a decent, safe and sanitary replacement dwelling within a one (1) year period, beginning on the later of the following dates:

(a) The date the person receives final payment from the Transportation Cabinet for the displacement dwelling; or

(b) In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court; or

(c) The date the person is advised by the Transportation Cabinet of the availability of comparable housing.

(2) The owner-occupant is eligible for a replacement housing payment when:

(a) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or part;

(b) He is in occupancy at the time he is given a written notice by the Transportation Cabinet of intent to acquire the property by a given date;

(c) His occupancy of the property has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and

(d) He purchased and occupied a decent, safe and sanitary dwelling within the time period specified in subsection (1) of this section;

(3) The combined total of the replacement housing payments for an owner-occupant of 180 days shall not exceed $22,500 for the additional costs necessary to purchase replacement housing; for compensation to the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for expenses incidental to the purchase of replacement housing which are incurred.

(4)(a) The amount of the replacement housing payment for the sole owner of a dwelling is the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling, whichever is less.

(b) When the displaced person obtains his decent, safe and sanitary replacement dwelling (not necessarily comparable to the dwelling from which he was displaced), his replacement housing payment shall be based on the amount spent for the replacement dwelling.

(c) If the replacement dwelling is not decent, safe and sanitary, he may be paid to correct the deficiencies if he maintains documented receipts.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for decent, safe and sanitary replacement dwelling.

(5) If a single-family dwelling is owned by several persons, and occupied by only part of the owners, the replacement housing payment shall be the lesser of:

(a) The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

(b) The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling.

(6) If the displaced owner-occupant of 180 days or more does not purchase and occupy a decent, safe and sanitary dwelling, he shall be entitled to receive a rent supplement payment if he rents and occupies a decent, safe and sanitary dwelling.

(7) It shall be the Transportation Cabinet's responsibility to make available a comparable replacement dwelling unit and to relocate the displaced person to his original ownership status if this is his desire. If the displaced owner-occupant desires to rent, the Transportation Cabinet shall make a reasonable effort to accomplish the request.

(8)(a) When an owner-occupant of 180 days or more retains and moves his dwelling to another location, the Transportation Cabinet shall determine if he is eligible for a replacement housing payment.

(b) If the dwelling meets the decent, safe and sanitary standards, improvements such as room additions or remodeling shall not be allowed in determining the amount of the replacement housing payment.

(c) If the dwelling retained and moved is not decent, safe and sanitary, the cost to improve it so that it complies with adequate standards shall be allowed if documented receipts are maintained.

(d) Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for a decent, safe and sanitary replacement dwelling.

(9) If an owner-occupant of 180 days or more has received a rental replacement housing payment and subsequently chooses to purchase a replacement dwelling, the amount of the rental replacement housing payment shall be deducted from the amount he would have been entitled to receive if he had purchased a replacement dwelling immediately. The combined payments shall not exceed $22,500.

(10) If the owner is allowed the option of retaining his dwelling, the replacement housing payment shall be computed in accordance with the appropriate paragraph below. The payments computed under paragraphs (a) through (c) of this subsection shall not exceed the amount the displaced person would have received if he had purchased a replacement dwelling.

(a) If the dwelling is decent, safe and sanitary, the payment, if any, shall be the amount by which the cost to relocate the retained

dwelling exceeds the acquisition price of the dwelling and homesite. The cost to relocate may include the reasonable costs of acquiring a new site and other expenses incidental to retaining and moving the dwelling, and restoring it to a condition comparable to that before the move. Payment shall not exceed $22,500;

(b) If the owner chooses to move his dwelling to a part of the tract not acquired by the Transportation Cabinet, the current fair market value for purchase of a residential site, not to exceed a typical size homesite, may be included as a cost to relocate the dwelling; or

(c) If the retained dwelling is not decent, safe and sanitary, the payment shall be computed as shown above, except the costs to correct deficiencies shall be included in the costs to relocate.

(11)(a) An owner-occupant of 180 days or more eligible for a purchase replacement housing payment who elects to rent a replacement dwelling is eligible for a rental replacement housing payment which shall not exceed $5,250 unless the conditions of subsection (12) of this section exist.

(b) To compute the eligible payment, from the amount the displaced person actually pays for a rental replacement dwelling, including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the fair market rent including monthly utilities of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(12) The rental payment authorized by subsection (11) of this section may only exceed $5,250 if the payment to purchase for an owner-occupant of 180 days could have been authorized as a last resort housing payment under Section 29 of this regulation and therefore, could have exceeded $22,500.

Section 19. Replacement Housing Payments - Owner-Occupants of Less Than 180 Days. (1)(a) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days and who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed $5,250.

(b) To compute the rental payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the monthly fair market rent of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(2) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days, may elect to receive an amount to enable him to make a down payment on the purchase of a replacement dwelling including the actual expenses incidental to the purchase, not to exceed $5,250, or for additional costs to relocate his retained dwelling in accordance with the following:

(a) The full amount of the payment shall be applied toward the purchase of the replacement dwelling and related incidental expenses and the displaced person shall purchase and occupy the dwelling within the time frame specified in Section 23(1) of this regulation;

(b) The displaced person may be eligible for the entire $5,250 for a down payment including incidental expenses, when the amount of the rental replacement housing computation is less than $5,250 or is zero, except either payment shall not exceed the amount the displaced person would receive if he were an owner-occupant of 180 days or more.

(3)(a) If an owner-occupant of less than 180 days retains his dwelling, then the replacement housing payment, if any, shall be determined in accordance with the provisions of Section 18 (10) of this regulation, but the payment shall not exceed $5,250.

(b) If an owner-occupant of less than 180 days has received a rental replacement housing payment, the amount of the rental payment shall be deducted from the amount to which he is entitled.

(c) The combined payments shall not exceed $5,250.

Section 20. Revisions to Replacement Housing Payment. (1) If the comparable housing used in the Transportation Cabinet's computation is not available at the time of the relocation offer, a new replacement housing payment shall be computed cased on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. However, the new replacement housing payment amount shall not be less than the original computed amount.

(2) When an adjustment is made in the fair market value offer to the owner-occupant because of an administrative settlement, an appeal from the commissioners' award, jury award or similar reason the replacement housing payment shall be recomputed based on the new acquisition price.

Section 21. Replacement Housing Payments - Increased Interest Payments. Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(1)(a) The increased interest payment shall be allowed only when the dwelling acquired by the Transportation Cabinet was encumbered by a mortgage which was made in good faith without fraud or deceit and which was a valid lien on the dwelling for not less than 180 days prior to initiation of negotiations for the acquisition of the real property, in whole or in part, or at the time a written notice is given of the Transportation Cabinet's intent to acquire the property and the displaced person obtains a mortgage on his replacement dwelling at a higher interest rate than the mortgage rate on the dwelling acquired by the Transportation Cabinet.

(b) All mortgages on the dwelling acquired by the Transportation Cabinet shall be considered in computing the increased interest cost portion of the replacement housing payment.

(c) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) In determining the amount of the increased interest payment, the computation shall be based on the monthly payment of the old mortgage, the remaining term of the old mortgage or term of new mortgage, whichever is shorter, and the old and new interest rates. Most increased interest payments shall also be based on the unpaid mortgage balance on the displacement dwelling. However, if the new mortgage amount is less, the payment shall be reduced accordingly.

(3) Documentation of the terms, amount and interest rate for the existing and new mortgages shall be submitted on a form prescribed and furnished by the Transportation Cabinet. This form shall be completed for the existing and new mortgages and signed by a representative of the lending agency. When a loan is included in a land contract, a copy of the contract may be used for documentation.

(4) Payment for purchaser's points, loan origination fees or assumption fees but not seller's points, shall be paid to the extent that:

(a) They are not paid as incidental expenses;

(b) They do not exceed rates normal to real estate transactions in the area; and

(c) They are determined to be necessary; and

(d) The points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount of the mortgage payment computed in this section.

(5) To document these charges in subsection (4) of this section, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(6) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual interest rate but shall not exceed the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(7) Increased interest payments normally shall be made directly to the displaced person. However, upon written request from the displaced person the payment may be made directly to the mortgagee of the replacement dwelling or may be paid into escrow prior to the displaced person's moving.

(8)(a) If the dwelling acquired is located on a tract normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the mortgage balance shall be reduced by the percentage ratio the acquisition price bears to the before value of the total tract. The reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(b) If a dwelling is located on a tract larger than normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(9) The interest payment on multiuse properties shall be reduced to the percentage ratio the residential value of the multiuse property bears to the before value.

(10)(a) If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as shown in subsection (7)(b) of this section.

(b) If the mortgage interest rate is obviously based on the higher use, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value of the parcel.

Section 22. Replacement Housing Payments- Incidental Relocation Expenses. The incidental expenses which may be paid are those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer.

(1) The type of incidental expenses eligible for payment shall include:

(a) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;

(b) Lender, Federal Housing Administration, or Veteran's Administration application and apprising fees;

(c) Loan origination or assumption fees that do not represent prepaid interest;

(d) Certification of structural soundness and termite inspection when required;

(e) Credit report;

(f) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for preparation of title insurance of a comparable replacement dwelling;

(g) Escrow agent's fee;

(h) State revenue or documentary stamps, sales on transfer taxes (not to exceed the costs for a comparable replacement dwelling); and

(i) Other costs as determined by the Transportation Cabinet to be incidental to the purchase.

(2)(a) An owner-occupant of 180 days or more who has a mortgage on the dwelling acquired and who places a mortgage on his replacement dwelling shall be reimbursed for the necessary and reasonable incidental expenses incurred when obtaining a mortgage on his replacement dwelling.

(b) An owner-occupant of 180 days or more who has no mortgage on the acquired dwelling, but who places a mortgage on his replacement dwelling shall not be reimbursed for the incidental expenses of obtaining his loan.

(c) An owner-occupant of less than 180 days, or a tenant-occupant of more than ninety (90) days who chooses to purchase a replacement dwelling may be reimbursed for eligible incidental expenses if they are included in the down payment. However, the total of the down payment and incidental expenses is limited to a maximum of $5,250.

Section 23. Replacement Housing Payments - Rental Payments. (1) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, if the displaced person:

(a) Actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and

(b) Has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year after the date he moves from the displacement dwelling if he is a tenant; or

(c) In the case of an owner-occupant, has rented or purchased and occupied decent, safe and sanitary dwelling within one (1) year of the later of the date he received final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or the date he moved from the displacement dwelling.

(2) The base monthly rental for the displacement dwelling shall be the least of the three (3) computations below:

(a) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement using either actual or fair market rent. For a tenant who paid little or no rent for the displacement dwelling, fair market rent shall be used unless it would result in a hardship due to his personal income or other circumstances; or

(b) Thirty (30) percent of the person's average monthly gross household income. If a person refuses to provide evidence of income or is a dependent, the base monthly rent shall be the average monthly cost for rent or utilities. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(c) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amount for shelter and utilities. The base monthly rental shall include any rent supplement supplied by others unless the supplement is to be discontinued upon vacation of the property.

(3)(a) To compute the rental assistance payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the base monthly rent of the acquired dwelling as determined in subsection (2) of this section.

(b) Then the cabinet shall multiply that amount by forty-two (42) to determine the actual payment.

(c) For owner-occupants the cabinet shall use the actual or fair market rent instead of the base monthly rent when computing the payment amount.

(d) In determining the amount necessary to rent a comparable dwelling the Transportation Cabinet shall examine, if available, three (3) comparable rental properties.

(e) Only when the local housing market does not contain three (3) comparable rental properties may the Transportation Cabinet determine the payment based on less than three (3).

(4) The disbursement of rental replacement housing payments may be in a lump sum payment, or in installments. The full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

Section 24. Replacement Housing Payments - Down Payment Assistance. (1) Down payment assistance may be given to a tenant-occupant of ninety (90) days or more who purchases a

replacement dwelling.

(2)(a) A displaced person eligible for rental replacement housing payment under Section 23 of this regulation may receive a down payment assistance payment not to exceed $5,250.

(b) In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(c) If the rental assistance payment computed under Section 23 of this regulation would be zero dollars, the displaced person is entitled to receive the $5,250 for a down payment.

(3) A displaced person eligible to receive a replacement housing payment as a 180 or more day owner-occupant is not eligible for this payment.

Section 25. Replacement Housing Payment - Sleeping Room Tenant. A displaced person who has occupied a sleeping room for ninety (90) days or more and who is eligible to receive a replacement housing payment, may receive an amount not to exceed $5,250 as a rent supplement, or to enable him to make a down payment on a replacement dwelling. The provisions of Sections 23 or 24 of this regulation shall be followed.

Section 26. Mobile Homes - General. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall be applicable to owners or tenants of mobile homes.

(2) If it is determined that a sufficient portion of a mobile home park is taken that the remainder is not sufficient to continue the operation, and a mobile home in the remaining part of the park is required to be moved as a result of the project, the owner and any tenant shall each be considered a displaced person. A mobile home may be considered a replacement dwelling provided it is substantially a decent, safe and sanitary dwelling.

(3) The ownership or tenancy of the mobile home (not the land on which it is located) shall determine the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home or the mobile home site shall determine the occupant's status as a 180 day or ninety (90) day owner or tenant. The mobile home shall have been occupied on the same site (or in the same mobile home park) for the requisite 180 days or ninety (90) days to make the occupant eligible for a replacement housing payment or rent supplement.

(4) A nonoccupant-owner of a mobile home is eligible for an actual cost moving expense payment.

(5) If the person is displaced from a mobile home park, a nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable park or if the Transportation Cabinet determines that it is necessary to pay the fee to effect relocation.

(6) There is no limit to the distance of the move of the displaced person. However, a relocation assistance moving expense payment shall be computed on a move of a distance of no more than fifty (50) miles, except when it is determined that the relocation cannot be accomplished within a fifty (50) mile radius. Beyond the fifty (50) mile radius, approval for a distance payment shall be limited to the nearest available mobile home site.

(7)(a) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling.

(b) If it is determined that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the cost of a comparable replacement dwelling shall be assumed to be:

1. The sum of the value of the mobile home;

2. The cost of any necessary repairs or modifications; and

3. The estimated cost of moving the mobile home to a replacement site.

(c) If a mobile home is not actually acquired, but the occupant is considered displaced under this administrative regulation, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he is a displaced person for the purpose of these procedures.

(d) If the owner is reimbursed for the cost of moving the mobile home under this administrative regulation, he is not eligible for a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(8) There may be other combinations of ownership of occupancy relating to mobile homes not covered in these procedures. In these cases, the Transportation Cabinet shall make every effort to treat the displaced person in a manner consistent with the other provisions of this section.

Section 27. Mobile Home Moving Expense Payments. (1)(a) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall also be applicable to owners and tenants of mobile homes.

(b) Displaced individuals or families occupying a mobile home may receive payment for the actual, reasonable expense of moving their personal property.

(c) If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home is reimbursable.

(d) If the owner chooses to move the mobile home, it shall be moved by a commercial mobile home carrier licensed by the Department of Vehicle Regulation.

(e) The owner may choose the mover, and receive reimbursement for the actual, reasonable expenses. Request for payment of moving expenses shall be supported by receipted bills.

(f) Prior to authorizing a move of a mobile home, the Transportation Cabinet shall determine:

1. The items of personal property to be moved, including the mobile home and any items stored in accessory buildings; and

2. Determine that the mobile home mover is a licensed commercial mobile home carrier and obtain from him an estimate of the moving costs.

a. This estimate shall include any necessary utility service connections.

b. If this estimate is not reasonable, the cabinet may approach another mobile home mover or renegotiate the price.

(2) If the mobile home is not acquired, but the mobile home owner-occupant obtains a replacement housing payment under one (1) of the circumstances described in Section 28 (2)(c) of this regulation, the owner shall not be eligible for payment for moving the mobile home, but may be eligible for payment for moving personal property from the mobile home.

(3) However, the following expenses shall be eligible for an actual cost moving expense payment:

(a) The reasonable cost of disassembling, moving, and reassembling any attached appurtenance, such as a porch, deck, skirting, or awning; anchoring of the unit; and utility hookup charges; and

(b) The reasonable cost of repairs or modifications if a mobile home requires repairs or modifications so that it can be moved or made decent, safe and sanitary, and it is determined that it would be economically feasible to incur the additional expense.

(3) Arrangements may be made between the Transportation Cabinet, the displaced person, and the mover so that the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover.

(4) An application for moving expense payments may be submitted in advance of the move so that payment is made available immediately upon completion of the move. In some unusual circumstances, and with prior approval of the Transportation Cabinet, moving expense payments may be made prior to the actual move.

(5) If a mobile home is considered real property, acquired by the Transportation Cabinet and included in the appraised value of the

site, and if the owner repurchases the mobile home from the Transportation Cabinet, the cost of moving the mobile home shall not be eligible for moving expense payments.

(6) If the landowner occupies the mobile home and the mobile home is acquired by the Transportation Cabinet or if a tenant-occupant of a mobile home is displaced, the displaced person shall move his personal property from his mobile home by one (1) of the following methods:

(a) The displaced person may elect to move his personal belongings by the use of a commercial mover as prescribed in Section 10(4) of this regulation.

(b) The displaced person may elect to move his personal property from the mobile home according to the fixed-rate schedule set out in Section 10(5) of this regulation. The room count of furniture shall be based on the actual number of furnished rooms. A small detached shed or building used to store such things as lawn mowers, lawn chairs, hoses, etc., shall be considered as an additional room, if the shed or building contains sufficient personality as to constitute a room.

Section 28. Mobile Home Replacement Housing and Rent Supplement Payments. (1) The replacement housing or rent supplement payment for a mobile home shall be computed in two (2) parts:

(a) The replacement housing or rent supplement payment for the mobile home shall be computed in accordance with the procedures set forth in Sections 15 and 18 through 25 of this regulation.

(b) The replacement housing or rent supplement payment for the mobile home site shall be computed based on comparable sites, but the total payment shall be limited to the maximums established in this administrative regulation according to the displaced person's ownership or tenancy of the land.

(c) The sum of these two (2) parts cannot exceed the $5,250 or $22,500 limit set for rent supplement or replacement housing payments. The total of these two (2) parts cannot exceed $22,500.

(2) A mobile home owner-occupant who has owned and occupied the mobile home for 180 days or more shall be eligible for a replacement housing payment not to exceed $22,500 provided:

(a) The displaced person owns the displacement mobile home and occupied it on the displacement site at least 180 days immediately prior to the initiation of negotiations;

(b) The displaced person meets the other basic eligibility requirements in Section 18 of this regulation; and

(c) The Transportation Cabinet acquired the mobile home as real property, or the mobile home is not acquired by the Transportation Cabinet but the owner is displaced because it is determined that the mobile home:

1. Is not and cannot economically be made decent, safe and sanitary; or

2. Cannot be relocated without substantial damage or unreasonable cost; or

3. Cannot be moved because there is no available comparable replacement site; or

4. Cannot be relocated because it does not meet mobile home park entrance requirements.

(d) If the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(3) A displaced owner-occupant of 180 days or more of a mobile home and site who meets the provisions of subsection (2) of this section:

(a) Shall be eligible for replacement housing payments for the following specific items:

1. The additional costs necessary to purchase replacement housing in accordance with Section 18 of this regulation;

2. The amount necessary to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing under the provisions of Section 21 of this regulation; and

3. An amount to reimburse the owner for incidental expenses incurred in the purchase of replacement housing in accordance with Section 22 of this regulation.

(b) Who is eligible for a replacement housing payment and who elects to rent is eligible for a rental replacement housing payment, not to exceed $5,250.

(4) If the Transportation Cabinet acquires both the mobile home and site from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases replacement housing the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home and site equals the lesser of the amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site, or if a mobile home and site are not available, the cost of a conventional dwelling, and the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home and site or conventional dwelling in accordance with the provisions of Section 18 of this regulation.

(b) If the owner elects to rent, the Transportation Cabinet shall compute the rental replacement housing payment by subtracting the fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental replacement dwelling, including estimated average monthly utilities, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and mobile home site or conventional dwelling, including the estimated average monthly utilities multiplied by forty-two (42).

(5) If the Transportation Cabinet from the owner-occupant of 180 days or more described in subsection (2) of this section acquires the site, but not the mobile home situated upon the site, and the mobile home is required to be moved, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement site, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home site equals the lesser of the amount the owner is required to pay for a comparable site, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home site;

(b) If the owner elects to rent a replacement site, the rental replacement housing payment shall be computed by subtracting the fair market rent including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To compute the actual payment the cabinet shall multiply that amount by forty-two (42).

(6) If an owner-occupied mobile home situated on a rental site is acquired from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement mobile home, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired the mobile home equals the lesser of the actual amount the owner is required to pay for a replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home, plus a site rental payment computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To determine the actual payment the Transportation Cabinet shall

multiply that amount by forty-two (42). The owner of the mobile home may choose to purchase a comparable mobile home site as an alternative to renting a site. If so, to receive the replacement housing payment, the full amount of the payment shall be applied toward the purchase price of the replacement lot and related incidental expenses. Also, the displaced person shall purchase the lot and place his mobile home on the replacement lot. This payment shall be limited to $5,250.

(b) If the owner elects to rent a replacement mobile home, the rent supplement payment shall be computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person pays for a rental mobile home and site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site including the estimated average monthly utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42) to compute the actual payment.

(7) If the Transportation Cabinet acquires the site where the owner-occupant of 180 days of a mobile home described in subsection (2) of this section rents the site but the cabinet does not acquire the mobile home, the replacement housing payment shall be determined as follows:

(a) If the owner of the mobile home elects to purchase a replacement site, the replacement housing payment shall be a down payment assistance payment not to exceed $5,250 if the owner of the mobile home purchases and occupies the replacement site within one (1) year. The full amount of the payment shall be applied to the purchase of a replacement mobile home site and related expenses.

(b) If the owner of the mobile home elects to rent a replacement site, the rental replacement housing payment shall be determined by subtracting the actual or fair market rent including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental mobile home site including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable mobile home site including utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42).

(8)(a) A displaced owner-occupant of a mobile home who has occupied for less than 180 days the mobile home on the site from which he is being displaced, and who is otherwise eligible under the provisions of Section 18 of this regulation is eligible for a replacement housing payment not to exceed $5,250.

(b) The replacement housing payment may enable him to make a down payment on the purchase of replacement housing in accordance with the provisions of paragraph (a) of this subsection and reimburse him for the actual expenses incidental to the purchase.

(c) If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraph (b) of this subsection. The payment is to be computed and disbursed in accordance with the provisions of Section 23 of this administrative regulation.

(d) When the cabinet is acquiring both the mobile home and site from the owner-occupant, the displaced person eligible for a rental replacement housing payment may receive a down payment assistance payment not to exceed $5,250 only if the full amount of the payment is applied to the purchase price of the replacement dwelling and related incidental expenses. The amount for which he is eligible shall be limited to the amount he would receive if he were an owner-occupant of 180 days or more.

(e) If the Transportation Cabinet acquires the mobile home and site from the less than 180 days owner-occupant, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the mobile home and site including utilities as determined in by the cabinet from the amount the owner actually pays for a rental mobile home and site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site, including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall multiply this amount by forty-two (42).

(9) If the Transportation Cabinet acquires the site but not the mobile home from the owner-occupant described in subsection (2) of this section except that he had occupied the mobile home for less than 180 days, the replacement housing payment shall be determined as follows:

(a) If the owner purchases conventional replacement housing or purchases a site to which the mobile home is moved, the replacement housing payment shall be determined as in subsection 8(a) of this section.

(b) If the owner elects to rent replacement housing, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the acquired site, including utilities as determined by the cabinet from the amount the displaced person actually pays for a rental replacement mobile home site, including the estimated average monthly utilities, or if less, the amount determined by the Transportation Cabinet as necessary to rent comparable mobile home site including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall then multiply this amount by forty-two (42).

(10) A displaced tenant of a mobile home who has occupied for at least ninety (90) days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of Section 23(1) of this regulation, is eligible for a replacement housing payment, not to exceed $5,250. The rental replacement housing payment shall be determined in accordance with the provisions of Section 23 of this regulation. If the displaced person elects to purchase a replacement dwelling, he shall receive a payment in accordance with Section 24 of this regulation.

Section 29. Last Resort Housing. The last resort housing procedures of this section shall be implemented when it is determined that a Transportation Cabinet project cannot proceed to actual construction because comparable replacement sale or rental housing, within the monetary limits is not available and the housing cannot otherwise be made available. A person cannot be required to move from his dwelling unless at least one (1) comparable replacement dwelling is made available to the person.

(1) If comparable decent, safe and sanitary housing is not available, any decision to provide last resort housing assistance shall be justified either:

(a) On a case-by-case basis, during which consideration has been given to:

1. Availability of comparable housing in the area of the project;
2. Resources available to provide comparable housing; and
3. Individual circumstances of the displaced person; or

(b) It is determined that:

1. There is little, if any, comparable replacement housing available to a displaced person within an entire project area. Therefore, a case-by-case justification for last resort housing assistance is not necessary;

2. A project cannot be advanced to completion in a timely manner without last resort housing assistance; and

3. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(2) No displaced person shall be deprived of any rights the person may have under KRS 56.610 to 56.760. No displaced person shall be required, without the person's written consent, to accept a dwelling provided by the Transportation Cabinet under the procedures described in subsection (3) of this section in lieu of any acquisition payment or any relocation payment for which the person may be eligible;

(3) The methods of providing last resort housing include, but are not limited to:

(a) A replacement housing payment in excess of the limits set forth in Sections 18 and 23 of this regulation. Rental assistance subsidy in last resort housing may be provided in installments or in a lump sum as determined by the Transportation Cabinet;

(b) Rehabilitation of or addition to an existing replacement dwelling;

(c) Construction of a new replacement dwelling;

(d) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may or may not be secured by the real property. The loan may or may not be interest free;

(e) The relocation and, if necessary, rehabilitation of a dwelling;

(f) The purchase of land or a replacement dwelling by the Transportation Cabinet and subsequent sale or lease to or exchange with a displaced person;

(g) Removal of barriers to the handicapped; and

(h) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

(4) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(a) Replacement housing based on space and physical characteristics different from those in the displacement dwelling;

(b) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate the individuals or families displaced from marginal or substandard housing with probable functional obsolescence; or

(c) For the displaced person who is ineligible for a rent supplement or a replacement housing payment (for example, a tenant of less than ninety (90) days or a person who occupies the property subsequent to the initiation of negotiation) when comparable rental replacement housing is not available at rental rates within the person's financial means. The housing provided shall be comparable housing. To determine if a tenant in this category is entitled to a replacement housing payment, the Transportation Cabinet shall subtract thirty (30) percent of the person's gross monthly household income from the cost of a comparable replacement dwelling and multiply the difference by forty-two (42). There shall be no prohibition against making direct payments to a displaced person under last resort housing. Each case shall be reviewed to determine if it is the best interest of the person or family. The payment may be made to a third party or in installments.

Section 30. Appeals. (1) A person may file a written appeal and request for hearing with the Transportation Cabinet in any case in which the person believes that the cabinet has failed to properly determine:

(a) His eligibility; or

(b) The amount of the payment required under the provisions of this administrative regulation.

(2) The Transportation Cabinet shall consider a written appeal regardless of form.

(3) The appeal shall be filed within sixty (60) days of the date of his written notice from the Transportation Cabinet of the cabinet's determination on the person's claim.

(4) A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.

(5)(a) The Secretary of the Transportation Cabinet shall appoint a hearing officer for the purpose of conducting the hearing and making a recommendation to the secretary with reference to the appeal.

(b) Technical rules of evidence shall not apply;

(c) The hearing officer shall be authorized to issue rulings regarding the competency, relevancy and materiality of the evidence to be presented at the hearing;

(d) A record of all evidence introduced at the hearing shall be made by the Transportation Cabinet.

(6)(a) The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal.

(b) A copy of this shall be made available to all parties concerned, including the person requesting the hearing and the attorney representing the Transportation Cabinet in this appeal procedure.

(c) They shall have twenty (20) days in which to comment on or object to the hearing officer's recommended decision. These comments or objections shall be presented in writing.

(7) The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider:

(a) The hearing officer's recommended decision; and

(b) any written comments received from the involved parties in making his final ruling.

(8) If the full relief requested in the appeal is not granted, the Transportation Cabinet shall advise the person of his right to seek judicial review.

J. M. YOWELL, State Highway Engineer
JERRY D. ANGLIN, Deputy Secretary and Commissioner
BOB G. BODNER, Executive Director
DON C. KELLY, Secretary
APPROVED BY AGENCY: July 1, 1993
FILED WITH LRC: July 8, 1993 at 9 a.m.

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

601 KAR 9:085. Procedures for becoming a certified motor vehicle inspector.

RELATES TO: KRS 186A.115
STATUTORY AUTHORITY: KRS 186A.115
NECESSITY AND FUNCTION: This administrative regulation sets forth requirements by which a person shall become a certified motor vehicle inspector.

Section 1. The requirements for an individual to become a certified motor vehicle inspector are:

(1) The [~~county~~] sheriff of the county for which the individual is to be certified shall designate [~~, on a form provided by the Department of Vehicle Regulation,~~] the following information [~~regarding [name of] each applicant proposed to be certified~~]:

(a) Name of sheriff;
(b) Designation of sheriff or sheriff elect;
(c) Count in which sheriff was elected;
(d) Sheriff's Social Security number;
(f) Sheriff's signature;
(g) Date the form was executed by the sheriff;
(h) Proposed inspector's:
1. Name;
2. Business mailing address;
3. County of residence;
4. Business and residence telephone numbers;
5. Current designation as certified inspector including inspector number and county, if applicable;
6. Prior inspector training and date, if applicable;
7. Certification that he **has satisfactorily completed the program to become** [~~meets all of the requirements of~~] a certified inspector set forth in Section 2 of this administrative regulation.

(2) [~~(a)~~] A certified motor vehicle inspector shall have reached his [~~or her~~] 18th birthday.

(3) [~~(b)~~] A certified motor vehicle inspector shall be a resident of

the county for which he [~~or she~~] is certified.

(4) [~~(c)~~] A designee shall not have a felony criminal record.

(5) A designee shall not have [~~nor~~] any pending felony charge at the time of his [~~or her~~] designation.

(6) [~~In addition~~] A designee shall not have a misdemeanor conviction or pending charge relating to KRS Chapter 516, forgery and related offenses or [~~nor~~] to KRS Chapter 523, perjury and related offenses.

(7) [~~(d) Neither~~] A licensed motor vehicle dealer or [~~nor~~] any employee in his dealership shall not be [~~is~~] eligible to become a certified motor vehicle inspector.

(8) [~~(2)~~] The designee shall [~~must~~] satisfactorily complete a training program conducted by the Department of Vehicle Regulation in conjunction with the Kentucky State Police.

Section 2. After the designee has satisfactorily completed the program [~~and notification of same by the instructor~~], the Commissioner of the Department of Vehicle Regulation shall issue a certificate certifying the designee to serve as a certified motor vehicle inspector.

Section 3. (1) The county sheriff may withdraw a designation at any time by notifying, in writing, the Commissioner of the Department of Vehicle Regulation.

(2) When notification of withdrawal of designation is received by the Department of Vehicle Regulation, the commissioner shall revoke the individual's certification.

Section 4. A [~~No~~] certified motor vehicle inspector shall not be allowed to inspect a motor vehicle after his [~~or her~~] certification has been suspended or revoked.

Section 5. Upon written notice to the county sheriff, the Commissioner of the Department of Vehicle Regulation or the Kentucky State Police acting through the department may require additional in-service training or recertification of any certified motor vehicle inspector [to meet statutory requirements].

Section 6. The Commissioner of the Department of Vehicle Regulation with sufficient cause may revoke or suspend the certification of any certified inspector. Sufficient cause includes but is not limited to a conviction or pending charge of a felony or a misdemeanor relating to perjury or forgery or failure to satisfactorily complete the training required in Section 2(2) of this administrative regulation. [~~this section.~~]

Section 7. (1) At least thirty (30) days prior to revoking or suspending a certificate, the department shall notify the certified inspector in writing of the action the department proposes to take and the reasons therefore.

(2) [~~Any~~] Certified inspector so notified may appeal the [~~such~~] action within forty-five (45) days.

(3) The [~~Such~~] appeal shall be in writing to the commissioner and shall set forth the basis for the appeal.

Section 8. (1) The commissioner shall designate an appropriate time and place to conduct the hearing.

(2) The [~~Such~~] hearing shall be held within sixty (60) days after receipt of the appeal.

(3) The appellant shall be notified at least ten (10) working days in advance of the time and place designated for the hearing.

(4) The commissioner shall within ninety (90) days after an appeal is filed, issue a final order for the disposition thereof.

(5) At the hearing the appellant shall have the right to be heard publicly and to be represented by counsel to present evidentiary facts.

(6) At the hearing [~~of such appeals~~], technical rules of evidence shall not apply.

Section 9. If [~~7. In the event~~] a sheriff is vacated from office in any county and there is not a certified inspector available in the county, the Commissioner of the Department of Vehicle Regulation may designate a temporary certified inspector until the [~~such~~] time a new sheriff takes office.

NORRIS BECKLEY, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: June 14, 1993
FILED WITH LRC: June 22, 1993 at 8 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(As Amended)

704 KAR 7:090. Homeless children education program.

RELATES TO: KRS [~~156.031,~~] 156.035, 42 USC 11432
STATUTORY AUTHORITY: KRS 156.035, 156.070
NECESSITY AND FUNCTION: In accordance with the Stewart B. McKinney Homeless Assistance Act Amendments of 1990, the Kentucky Department of Education, when applying to the U.S. Department of Education for participation in programs for homeless children under the Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 USC Section 11432 shall be met. This administrative regulation implements the State Board for Elementary and Secondary Education's KRS 156.029 [~~156.031~~] and 156.035 duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper implementation of federal law in accordance with the state's current plan. This administrative regulation sets forth criteria regarding residency policies, the provision of a free, appropriate public education to homeless children, provides informal procedures for resolution of disputes regarding educational placement of homeless children, provides grants to local educational agencies for the enrollment, retention and educational success of homeless children and homeless youths, and provides for an annual count of homeless children and homeless youth.

Section 1. Definitions. (1) "Homeless child", "homeless children", "homeless youth", and "homeless student" means a child or children who are between the ages of five (5) and twenty-one (21) inclusive and who are:

(a) Living with their families in hotels, motels, public or private shelters or other temporary living arrangements due to the lack of a fixed, regular and adequate residence;

(b) Residing in special care homes such as runaway shelters or spouse abuse centers due to the lack of a fixed, regular and adequate residence;

(c) Placed by parents under the care of relatives or nonrelatives due to the homeless situation of the family or due to their impoverished condition which may cause the family members to live separately from one another;

(d) Sleeping in a public or private place not ordinarily used as a regular sleeping accommodation for human beings;

(e) Sick or abandoned children staying in hospitals, who would otherwise be released if they have a place to go;

(f) Living in campgrounds or similar temporary sites because they lack living accommodations that are fixed, regular and adequate. Those living in campgrounds on a long-term basis in adequate accommodations shall not be considered homeless; or

(g) Runaway or throwaway youth who have been "thrown out" of their home environment and who are living in a shelter, on the street, or who move from one friend's house to another in a cycle of transiency.

(2) [~~Such homeless children shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and regulations which:~~

~~(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or~~

~~(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.~~

~~(3)~~] "Free, appropriate public education" means the educational programs and services that are provided the children of a resident of a state, and that are consistent with state school attendance laws. It includes educational services for which the child meets the eligibility criteria, such as compensatory education programs for the disadvantaged, and educational programs for the handicapped and for students with limited English proficiency; programs in vocational education; programs for the gifted and talented; school meals programs; extended school programs; preschool programs; and programs developed by the family resource and youth services centers.

(3) [~~(4)~~] "School of origin" shall mean the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.

Section 2. Criteria for Program Implementation. Homeless children or homeless youth who reside within the boundaries of a local school district shall be provided a free, appropriate public education. Programs for homeless children and youth shall be provided in a timely fashion and shall be ensured by the following actions:

(1) Each local district shall designate a person in the district to be a homeless child education coordinator and shall submit the name of the person to the Kentucky Department of Education. The coordinator's responsibilities shall be to:

(a) Obtain all necessary records, including birth certificates and immunization records, of each homeless student identified as living within the boundaries of the school district and, as expeditiously as legally possible, place the student in appropriate programs. In cases where records are not readily available, the coordinator shall contact the school district(s) of last attendance for verbal confirmation of essential information. The coordinator shall assist the homeless student to obtain essential records which are not in existence in order that enrollment shall not be delayed or denied;

(b) Receive and resolve any requests for resolution of disputes related to the educational placement of homeless students within the district. The coordinator shall provide the necessary information to the Department of Education for final resolution whenever such a request is received and is not resolved;

(c) Assist the homeless student to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental and other appropriate services;

(d) Develop procedures to ensure that homeless student records are readily available upon request by a new receiving school district; and

(e) Develop a liaison with known homeless service providers and state agencies in the community to identify and enroll homeless students living there.

Section 3. Residency. The school district of residence **shall be** [~~is~~] the district in which the homeless student physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere. The school district of residence shall ensure that:

(1) The homeless student is enrolled in the school attendance area in which he or she is physically located or that the homeless student's education is continued in the school of origin for the remainder of the academic year, or in any case in which the family becomes homeless between academic years, for the following academic year; or enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend, whichever is in the best interest of the homeless student.

(2) In determining the best interests of the child or youth for purposes of making a school assignment under Section 3(1) of this regulation, consideration shall be given to a request made by the parent regarding school selection.

(3) A homeless student shall not be denied enrollment in the school district of residence due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student shall be enrolled and provided educational services until such time that the school district can substantiate that the enrollment is contrary to Section 1(2) of this administrative regulation.

(4) In the absence of a parent, and a court-appointed custodian or guardian, any medical, dental and other health services may be rendered to a homeless student who is a minor of any age when, in the judgment of the school principal or other professional that the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(5) Homeless children shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and administrative regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident school district or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association.

(6) **[**~~No policy of the~~**]** School district **policy** shall **not** delay or deny the timely provision of educational placement and appropriate services to the homeless student, including policies related to guardianship issues.

Section 4. Resolution of Disputes. Disputes arising between or among the school district of residency; another school district; and the parent, homeless youth, or person in parental relationship to the homeless student regarding the school district in which the child shall attend school or the educational placement of the homeless student shall be resolved through the following procedures:

(1) The school district's homeless child education coordinator shall inform the representative of the homeless student of the right to an informal hearing with the school district(s) when a dispute arises about the placement of the homeless student. The coordinator shall assist the representative to complete a written request for the hearing which shall be based on a placement that was initiated, or declined to be initiated, by the school district not more than two (2) school weeks prior to the request.

(2) The informal hearing shall be scheduled within two (2) days of the written request and shall be convenient to the needs of the representative of the homeless student.

(3) During the hearing, the school district(s) shall discuss any considerations that led to the placement decision which may include the ability of the school district to provide continuity in educational programs, the need of the homeless student for special instructional programs, the amount of time and arrangements required to transport the student to the original school district, the age of the homeless student and the school placement of siblings, and the time remaining until the end of the semester or the end of the school year.

(4) In cases where an agreement cannot be reached among all involved parties, either party may request the assistance of the state

homeless children education coordinator. Upon written request, the coordinator shall meet with the involved parties to discuss available alternatives and seek to resolve the dispute.

(5) In cases of such a request for the assistance of the state coordinator, the school district of residence shall inform the Kentucky Department of Education and shall provide sufficient information as required.

(6) The placement and services for the homeless student shall be continued pending the resolution of the dispute by the Department of Education.

Section 5. Annual Count. The Department of Education shall annually conduct a count of all homeless children and youth in the state as follows:

(1) Survey instruments shall be distributed to local school districts, related social agencies, and appropriate service providers no later than October 1 of each year.

(2) Local school districts, social agencies, and service providers shall take an unduplicated count of homeless children and youth and shall return the completed forms to the Department of Education according to the time lines provided.

(3) The Department of Education shall develop procedures as required to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Education[al] Agency Grants for the Education of Homeless Children and Youth. The Kentucky Department of Education shall make grants to local education[al] agencies (LEA) when such funds become available through a competitive application process. Grants will be awarded to LEAs based upon the review and rating of their applications. [~~in the following manner:~~

~~(1) For any year in which there is an increase in funds in relation to the previous year, all school districts in the state shall be eligible to apply for this money through a request for proposal (RFP) process. Districts which receive funds shall be given priority status for two (2) years, and shall receive continued funding contingent upon a positive evaluation and review of the project and continued need.~~

~~(2) For any year in which there is a decrease in funds in relation to the previous year, only those districts which received a grant in that previous year shall be eligible to submit an RFP for the present year. If a majority of these districts either decide not to reapply for refunding, or receive a negative evaluation or are found to no longer have a need for these funds, the amount of money which would have been awarded to them will be made available to all other districts through a RFP process. If the funding level remains at or below the previous year for two (2) years, on the second year of this cycle the grant money shall be made available to all districts through the RFP process.~~]

(1) [~~(3)~~] Not less than fifty (50) percent of amounts provided under a grant to local districts shall be used to provide primary services of tutoring, remedial education services, or other education services to homeless children or homeless youths.

(2) [~~(4)~~] Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to local districts shall be used for related activities including expedited evaluations, professional development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(3) [~~(5)~~] A local district that desires to receive a grant shall submit an application to the Kentucky Department of Education. Each application shall include:

(a) The number of homeless children and youth enrolled in preschool, elementary and secondary school, the needs of such children and the ability of the district to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs (i.e., enrollment, retention and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and homeless youths;

(d) A description of policies and procedures that the district shall implement to ensure that activities carried out by the district shall not isolate or stigmatize homeless children and homeless youth;

(e) A description of coordination with other local and state agencies that serve homeless children and homeless youths; and

(f) Other criteria the Kentucky Department of Education deems appropriate.

Section 7. The "Special Amendment to School Data Form for Homeless Children/Youth" dated July 1992, and the "Homeless Children and Youth Education Program - Educational and Related Services for Homeless Students Grant Application", dated May, 1993, are hereby adopted and incorporated by reference. These documents may be inspected, copied, and obtained from the Department of Education, 1715 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 14, 1993
FILED WITH LRC: July 15, 1993 at 10 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(As Amended)

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. Definitions. "Local health personnel" means credentialed professionals in the public or private domain who deal with mental or physical health related matters as their primary occupation either in school or community settings.

Section **2.** [~~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 **3.** [~~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 4. [~~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 5. [~~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.

Section 6. The "Application for Home/Hospital Instruction, June 1993" is hereby approved and incorporated by reference. Copies of the document may be inspected and copied at the Division of Exceptional Children Services, Department of Education, 8th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: June 4, 1993
FILED WITH LRC: June 4, 1993 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended)

704 KAR 20:120. Emergency certification.

RELATES TO: KRS 161.020, 161.028, 161,030, 161.100
STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.100
NECESSITY AND FUNCTION: KRS 161.100 provides for the employment of school personnel in the event that fully qualified teachers are not available for specific positions. This administrative regulation establishes the qualifications and procedures by which the local boards of education and the Education Professional Standards Board may comply with the statute.

Section 1. (1) In order to comply with KRS 161.100 in establishing the need for employing emergency teaching personnel, the superintendent of the local school district and the board of education shall make the following declaration to the Education Professional Standards Board on request forms supplied by the Office of Teacher Education and Certification:

(a) No qualified teachers have applied for the vacant position and to our knowledge qualified teachers are not available for the position.

(b) Diligent efforts have been made to recruit a qualified teacher for the vacant position, and furthermore, this vacancy has been made known locally by appropriate means.

(c) The local school district has been unsuccessful in recruiting qualified teachers for the vacant position from the listings of teachers supplied by the placement services of the teacher education institutions.

(d) The position will be filled by the most suitable applicant available, giving preference to the factors of academic preparation, prior teaching experience or related educational work, and personal attributes compatible with the demands of the teaching profession.

(e) The local school district has conducted a criminal records check as required by KRS 160.380 for each applicant prior to applying for the emergency certificate.

(2)(a) The Education Professional Standards Board, depending upon the assessment of need for the position and the availability or anticipated availability of qualified teachers, shall approve or disapprove a request for the employment of emergency teachers. The term of validity of an emergency certificate may be limited to a period less than the full school year; the beginning date shall be no earlier than the date the request form is received in the Department of Education.

(b) The issuance of an emergency certificate for a full-time assignment for each subsequent year shall require completion of six (6) hours of credit from the preparation program leading to the required certification for the position.

(3) Emergency certification for an assignment as teacher of exceptional children shall be issued with the condition that the applicant shall receive intensive training on special education topics, such as IEP, assessment, evaluation, individualized instruction, methods, and management. This training shall be accomplished as follows:

(a) The applicant shall complete twelve (12) clock hours of training as required by the Office of Special Instructional Services.

(b) The applicant shall complete an additional six (6) clock hours of training during the fall conference conducted by the Division of Exceptional Children Services. Teachers employed after the fall conference shall complete these six (6) clock hours of training during the spring conference of the Council for Exceptional Children.

(c) The applicant shall participate in at least one (1) day of flexible in-service training, relevant specifically to special education. The [~~Such~~] training shall be limited to visitation in a classroom of an exemplary special education teacher, special education training relevant to the identified needs of the teacher, or other training provided by the Office of Special Instructional Services.

(4)(a) The superintendent of the local school district and the board of education may establish the need for emergency substitute teachers on the basis of anticipated shortages of regularly certified teachers and in accordance with district policies and procedures established for the selection and employment of substitute teachers. Emergency certificates for substitute teaching may then be issued subject to the priority schedule for the employment of substitute teachers as established by 704 KAR 20:210.

(b) Each local school district shall report by June 30 of each year [~~on forms provided by the Office of Teacher Education and Certification~~] the number of days of substitute teaching performed by each emergency teacher.

(5) The Office of Teacher Education and Certification shall periodically report to the Education Professional Standards Board the numbers of emergency certificates issued for full-time, part-time, and substitute teaching by school district, by position, and by academic

preparation.

(6)(a) An emergency certificate for full-time or part-time employment shall be issued only to individuals who have attained a bachelor's degree from a regionally accredited college including a minimum grade point average of 2.5 on a 4.0 scale. An emergency certificate for full-time or part-time employment shall not be issued to individuals who have been judged to be unsatisfactory in the beginning teacher internship.

(b) An emergency certificate for substitute teaching shall be issued to individuals who have completed a minimum of sixty-four (64) semester hours of credit from a regionally accredited institution including a minimum grade point average of 2.5 [2.0] on a 4.0 scale. An emergency certificate for substitute teaching issued for the 1992-93 school year may be reissued for 1993-94 and for succeeding consecutive years.

(c) An emergency certificate for substitute teaching in any health, technical, or industrial occupation may be issued to persons who have a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

(7) An application form signed by the local school superintendent and approved by the local board of education shall be submitted for each anticipated emergency position. The application shall be accompanied by official transcripts of all college credits earned by the prospective emergency teacher.

JANICE WEAVER, Chairman
APPROVED BY AGENCY: June 21, 1993
FILED WITH LRC: July 15, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(As Amended)

707 KAR 1:061. Repeal of existing administrative regulations.

RELATES TO: KRS 157.200 **through 157.290**
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220
NECESSITY AND FUNCTION: KRS 156.070, 156.160 and 157.220 authorize the State Board for Elementary and Secondary Education to adopt administrative regulations establishing standards which local school districts and state operated schools shall meet in student, program, services and operational performance and related to special education programs. KRS 157.200 **through 157.290** establishes the statutory framework for special education programs. This administrative regulation repeals currently existing administrative regulations related to special education programs, as new administrative regulations have been promulgated to address special education requirements.

Section 1. The following administrative regulations are hereby repealed:

(1) 707 KAR 1:041, Programs for Deaf-Blind Children;

(2) 707 KAR 1:051, Exceptional Children's Programs;

(3) 707 KAR 1:052, Programs for Children with Communication Disorders;

(4) 707 KAR 1:053, Programs for Physically Handicapped and Other Health Impaired Children;

(5) 707 KAR 1:054, Programs for the Emotionally Disturbed, Behavior Disordered;

(6) 707 KAR 1:055, Programs for Home Instruction and/or Hospital Instruction;

(7) 707 KAR 1:056, Programs for Children with Specific Learning Disabilities;

(8) 707 KAR 1:057, Programs for Mentally Handicapped Children;

(9) 707 KAR 1:058, Programs for Multiple Handicapped Children;

(10) 707 KAR 1:059, Programs for Visually Handicapped Children;

(11) 707 KAR 1:060, "Due Process Policy and Procedure Manual";

(12) 707 KAR 1:070, Nonpublic School Program Approval; and

(13) 707 KAR 1:080, Appeals Board.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 14, 1993
FILED WITH LRC: April 15, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(As Amended)

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 describing 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 **outlined in subsection (5) of this section** 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 **all** other requirements of Part B under IDEA **(34 CFR Part 300)**.

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
(As Amended)

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) "Independent evaluation" means 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.
(4) **[~~(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.
(5) **[~~(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.
(6) **[~~(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).
(7) **[~~(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 **as described in Sections 4 and 5 of this administrative regulation**, to complete the individual education program (IEP), **as defined in 707 KAR 1:210, shall** 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) **school** 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 **shall not be** **[~~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 **location of the meeting** [~~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 **date, time, or** 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 **shall not be** [~~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 **the** [~~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; **or** [~~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 **or their authorized agent** 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 **and by individuals with specialized knowledge or training with respect to the problems of children with disabilities**.

(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 **at the request of either party** 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 inadmissible **unless the parties agree otherwise** [~~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 inadmissible **unless the parties agree otherwise** [~~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. **The initiating party shall not waive its opening statement.**

(c) The noninitiating party shall then [~~have the right to~~] make an opening statement. **The noninitiating party shall not waive its opening statement.**

(d) Following the opening statements, **the hearing officer shall direct one (1) party to** [~~the initiating party shall~~] present its evidence and testimony.

(e) The **other** [~~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.

(11) Copies of the hearing officer decisions, including findings of fact and conclusions of law with all personally identifiable information deleted, shall be transmitted to the State Advisory Panel for Exceptional Children.

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 **at the request of either party**.

(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.

(3) Copies of the Exceptional Children Appeals Board decisions, including findings of fact and conclusions of law with all personally identifiable information deleted, shall be transmitted to the State Advisory Panel for Exceptional Children.

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.

Section 15. Placement of Students at Kentucky School for the Blind/Kentucky School for the Deaf (KSB/KSD).

(1) Local admissions and release committees may consider placement of students with visual disabilities at KSB and students with hearing disabilities at KSD, even though they do not meet the criteria for admission set by the Kentucky Department of Education.

(2) Local admissions and release committees shall not automatically place students at KSB and KSD who do not meet their admissions criteria. The admissions criteria shall not prevent placement if placement is provided for by an IEP as the result of appropriate due process procedures specified in the Individuals with Disabilities Education Act.

(3) If an admissions and release committee wants to consider placement at KSB/KSD of a student with disabilities who does not meet the admissions criteria, the superintendent from the local education agency shall send to the Director, Division of Exceptional Children Services:

(a) A letter notifying the director of their interest in considering placement;

(b) All pertinent notices of proposed actions from meetings where this has been discussed;

(c) A copy of the written notice of eligibility determination; and

(d) All appropriate assessment information.

(4) An admissions and release committee shall be scheduled which affords the division director or his designee the opportunity to participate. In the event of a disagreement, the state education agency, local education agency, or parent may appeal by requesting a due process hearing. The final decision must be made according to the due process procedures outlined in this administrative regulation. The KSB/KSD admissions criteria may be considered but are not binding upon the decision-makers.

Section 16. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

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
(As Amended)

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 observations" 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) **as described in 707 KAR 1:180** 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 **and** [~~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 frequent-

ly if conditions warrant, or at the request of the parent or teacher.

(2) The reevaluation shall be conducted **consistent with Section 4 of this administrative regulation and** 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) **as defined in 707 KAR 1:210**; 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 **(two (2) previous measures within a standard error of measurement of each other). [~~, 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**; and**

(c) Alternate measures of cognitive functioning shall be utilized to insure that the child or youth receives a full and individual evaluation in all areas related to the suspected 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.

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

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
(As Amended)

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) "Academic processing deficits" means dysfunctions in the normal sequence of acquiring, developing, understanding, organizing, manipulating, retrieving or responding to information across a variety of settings in oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculations, and mathematics reasoning.**

(2) [~~(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.

(3) "Basic reading skills" means using the process of perception and word recognition including decoding and matching to facilitate acquiring meaning from connected prose.

(4) [~~(2)~~] "Educational performance" means acquiring, developing, understanding, or applying knowledge or skills needed for academic performance or social competence.

(5) "Fluency disorder" means an interruption in the flow of speaking, characterized by atypical rate, rhythm, and repetition in sounds, syllables, words, and phrases which may be accompanied by excessive tension, struggle behavior, and secondary mannerisms.

(6) "Language disorder" means impaired comprehension or production of spoken, written or other symbol systems which may involve:

(a) The form of language (phonology, morphology, syntax);

(b) The content of language (semantics); or

(c) The use of language in communication (pragmatics) in any combination.

(7) "Listening comprehension" means the process of translating spoken words into meaning using the components of receptive vocabulary; morphological, syntactic, pragmatic, and metacognitive processing; and working memory.

(8) "Mathematics calculation" means completing the arithmetic and algebraic procedures accurately and automatically including the operations of addition, subtraction, multiplication, and division.

(9) "Mathematics reasoning" means using the processes of problem translation, problem integration, solution planning, solution execution, and solution monitoring to solve math problems.

(10) "Oral expression" means the ability to communicate

using spoken language, morphological processes, syntax, vocabulary, pragmatics, and noncommunicative language functions.

(11) "Reading comprehension" means using the processes of literal comprehension including meaning access and parsing; inferential comprehension including integration, summarization and elaboration; and comprehension monitoring including goal setting, strategy selection, goal checking, and self-correcting processes to facilitate acquiring meaning from connected prose.

(12) "Speech sound production and use disorder" means the atypical production of speech sounds in connected speech including phonetic (articulation) errors or phonemic (phonological) errors which may interfere with intelligibility.

(13) "Voice disorder" means abnormal use or absence of vocal quality, pitch, loudness, resonance, or duration, which is inappropriate for an individual of similar age and gender.

(14) "Written expression" means the communication of ideas using printed symbols to convey meaning to various audiences for a variety of purposes using the processes of planning through goal setting, idea generation, and idea organization, translation (graphic, syntactic, semantic, textual, and contextual) and reviewing.

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), **as described in 707 KAR 1:180,** 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 **individual education program** (IEP)**, as defined in 707 KAR 1:210**. 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 **disorder** [~~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 **disability** [~~impairment~~] in one (1) or more of the following areas:

1. Speech sound production and use;

2. Language comprehension;

3. Fluency; or

4. [~~Receptive language, expressive language, fluency and~~] Voice.

(b) [~~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 **a** second language (ESL), or **an** ability to speak or understand two (2) or more languages in the absence of a disorder in communication.

(c) A speech sound production and use disorder exists when the following criteria are met:

1. Attained scores on a standardized instrument are at least one and one-third (1 1/3) standard deviations below the mean or at the ninth percentile;

2. When compared to same age peers who are not disabled, productions reflect common sound or phonological processes errors and connected speech is occasionally unintelligible or noticeably in error; and

3. Speech mechanism structure and functions is minimally inadequate.

(d) A language comprehension or use disorder exists when the following criteria are met:

1. Attained scores on a standardized instrument are at least one and one-third (1 1/3) standard deviations below the mean or at the ninth percentile; and

2. When compared to same age peers who are not disabled, language skills differ in form (phonology, morphology, syntax), content (semantics) or use (pragmatics).

(e) A fluency disorder exists when the following criteria are met:

1. A minimum of ten (10) disfluencies per 100 words;

2. Type of disfluency includes whole monosyllable word repetitions, broken words, part-word repetitions, or silent or audible prolongations; and

3. Three (3) per part-word repetitions, phonatory arrest or sustained articulatory posture of at least one-half (.5) seconds in duration, sound prolongations of at least one and one-half (1.5) seconds in duration, struggle behavior, or accessory features.

(f) A voice order exists when the following criteria are met:

1. Pitch is noticeably, intermittently, and abnormally high or low;

2. The degree of loudness in noticeably, intermittently, and abnormally different from similar age peers who are not disabled;

3. Quality is noticeably, intermittently and abnormally breathy, harsh, or hoarse;

4. Nasal resonance is noticeably, intermittently, and abnormally hypernasal or hyponasal; or

5. Pitch, loudness, quality or nasal resonance problems resulting from minor laryngeal pathology reported by a licensed physician, including vocal fold thickening, edema, or nonfiberous nodule; and

6. Problems persist over time and are not solely the result of temporary physical factors such as allergies, cold, abnormal tonsils or adenoids, transient vocal abuse or misuse.

(2) The ARC shall document its interpretation of education information that the disability adversely affects educational performance and the child is eligible for specially designed instruction and related services.

[~~(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; **or**

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 **a compilation of previous and current behavioral, academic, and intervention data** [~~evaluation information~~] collected across multiple settings verifies **that:** [~~each of the following:~~]

(a) When compared to [~~the appropriate~~]peer and cultural **norms** [~~reference group~~], the child or youth continues to exhibit **severe deficits in social competence or academic performance:**

1. To a marked degree;

2. Across settings;

3. Over a long period of time; and

4. After appropriate academic and behavioral interventions have proven ineffective.

(b) If any deficit in social competence is identified, then the deficit is to the extent that it impairs personal relationships with peers or adults and clearly indicates the behavior deviates from the standards for the appropriate peer and cultural reference groups.

(c) If any deficit in academic performance is identified, then the deficit is to the extent that it impairs development, mastery, and application of skills and knowledge and is related to social-emotional problems of the child or youth.

(d) The severe deficit in social competence or academic performance is not solely the result of:

1. Vision, hearing, physical, cognitive, or speech and language disabilities; or

2. Cultural, ethnic, medical, developmental, social, or home factors.

(2) The ARC shall document its interpretation of evaluation information showing that the disability adversely affects educational performance and the child or youth is eligible for specially designed instruction and related services. [~~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 **two (2)** **[**~~one (1)~~**]** standard deviation**s** below the mean; **[**~~and~~**]**

3. A severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge**; and**

4. Is manifested during the developmental period.

(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 **three (3)** **[**~~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**; and**

4. Is manifested during the developmental period.

(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) **An ARC shall determine that a child or youth has the disability of other health impairment as defined in KRS 157.200 and is eligible for specially designed instruction and related services if each of the following are met:**

(a) A current educationally relevant medical evaluation completed by a licensed physician verifies:

1. The existence of a severe health impairment caused by 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;

2. The diagnosis and nature of the health impairment; and

3. The effect of the impairment on the vitality, strength, or alertness of the child.

(b) Current educationally relevant evaluation information collected across multiple settings verifies the impact of the impairment on instructional tolerance, stamina, fine and gross motor, locomotion, physical education, and academic performance.

(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. **[**~~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 **a** **[**~~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 **each of the following are met:**

(a) **[**~~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 **verifies:** **[**~~including:~~**]**

1. The existence **[**~~(a) Verification~~**]** of a severe orthopedic or physical impairment **caused by congenital anomaly, disease, injury, or accident;**

2. **[**~~including~~**]** The diagnosis and nature of the impairment; **and**

3. Any limitations resulting from the impairment.

(b) **Current educationally relevant evaluation information collected across multiple settings verifies the impact of the impairment on** **[**~~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) That when provided with appropriate learning experiences, 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) or more of the [~~following~~] seven (7) areas listed in paragraph (b) of this subsection. The area(s) of concern identified on the referral or through the comprehensive evaluation process continues following multiple appropriate support and interventions implemented over time and demonstrates little or no progress as defined by local school district procedures.

(b) A severe aptitude-achievement discrepancy exists between academic performance and cognitive aptitude as determined by using the regression estimated true score method or the nonstandard score method.

1. A severe aptitude achievement discrepancy is evidenced when the achievement score of the child or youth is less than or equal to the four (4) percent criterion score as determined using one (1) of the above methods and is evidenced in one (1) of the following seven areas as defined in Section 1 of this administrative regulation:

a. Oral expression;

b. Listening comprehension;

c. Written expression;

d. Basic reading skills;

e. Reading comprehension;

f. Mathematics calculation; and

g. Mathematics reasoning.

2. The regression estimated true score method with a z-score set at four (4) percent shall be used when:

a. Normative ability and achievement measures yielding valid standard scores are used; and

b. Correlations between the aptitude and achievement tests are known for the age of the child or youth.

3. The nonstandard score method shall be used when standardized, normative measures of ability and achievement appropriate to the regression estimated true score method are invalid or not available.

4. If the nonstandard score method is used, then the ARC shall:

a. Provide a written rationale why the formal evaluation procedures used with most children and youth are invalid including which scores from the aptitude and the achievement measures are invalid;

b. Specify the formal and informal assessment procedures used to evidence the ability and achievement scores;

c. Provide scores and their interpretation from the alternative procedures;

d. Describe the ability and achievement indices for the child or youth and the methods used to evaluate a specific discrepancy;

e. Describe how other children or youth of the same age and ability are expected to perform; and

f. Describe whether the discrepancy between aptitude and achievement is severe and occurs in four (4) percent or less of the population.

(c) An academic processing deficit exists when informal instructional assessments including behavior observations in the area(s) where an aptitude-achievement discrepancy is evidenced indicate a reliable and stable pattern of the performance of the child or youth and demonstrate a processing deficit in one (1) of the seven (7) areas listed in paragraph (b)1 of this subsection and Section 1 of this administrative regulation.

(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. If evaluation data collected supports the presence of one (1) or more of these exclusion conditions, the ARC documents:

1. The chronicity, severity, and frequency of the exclusionary condition; and

2. The method used for determining if the exclusionary condition is or is not the primary reason for the aptitude-achievement discrepancy.

(e) A social competence deficient may exist when attained scores, including evaluations of those adaptive behaviors critical to independent functioning and social responsibility meet the following criteria:

1. The composite score is greater than, or equal to, a subaverage standard score (greater than or equal to seventy-five (75)) or in the fourth percentile; and

2. A domain or subtest standard score is eighty-five (85) or less than, or equal to, the 15th percentile.

(2) When social competence evaluation data indicates the impact of a specific learning disability on one (1) or more nonacademic areas of social competence, the ARC shall include appropriate educational planning for those areas of social competence.

(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 effect on educational performance including:

1. A statement describing in which of the seven (7) areas in subsection (1)(b)1 of this section the child or youth has a specific learning disability including the identified academic processing deficit.

2. A statement verifying that the child or youth meets all of the eligibility requirements.

(b) The basis for making the determination including the assessment procedures, results and criteria used to determine:

1. An academic processing deficit;

2. Social competence including adaptive behavior;

3. Appropriate learning experiences;

4. The impact of the learning problems resulting from other disabilities or from environmental, cultural or economic differences, any indicators identified, and a description of how the ARC determined the significance of the impact; and

5. Aptitude-achievement discrepancy;

(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 academic performance and cognitive aptitude exists that is not correctable without specially designed instruction and related services;

(g) The determination of the ARC concerning environmental, cultural or economic differences, how these factors have influenced learning and the criteria used to determine the impact.

(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) or more of the seven (7) areas in subsection (1)(b)1 of this section shall not be a requirement for continuing eligibility.

(6) The ARC shall document any alternative explanations for the learning problem(s) of this child or youth and 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.

[~~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.

Section 16. Developmental Delay. An ARC shall determine that a child has the disability of developmental delay if the child meets the definition set forth in KRS 157.200, and the criteria set forth in 707 KAR 1:150.

Section 17. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

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
(As Amended)

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) **as described in 707 KAR 1:180** 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" **shall be defined pursuant to KRS 157.200(5).** ~~[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
(As Amended)

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 **that** 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 **that** 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 **school** 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), **as defined in 707 KAR 1:210** 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), **as described in 707 KAR 1:180** 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 **of children and youth with disabilities** 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 **describe** [~~specify~~] in writing **the steps for making needed changes** [~~modifications to be made~~] in the regular education environment to implement the IEP**. These changes may include:** [~~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 **to the parent or emancipated youth** 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) **If the parent of a preschool aged child chooses to continue services for the child,** no later than the child's third birthday, an ARC shall determine eligibility of the child for preschool special education services and, as needed, shall develop an IEP, make a placement decision, and implement the IEP in the placement determined.

(4) Plan for transition. Each youth with a disability shall have a plan to assist the youth in preparing for postschool activities. An ARC shall develop this plan no later than the age when youth without disabilities enter high school consistent with the youth's multiyear course of study.

(a) The plan for transition shall be based on results of current evaluation which include assessments of vocational functioning as specified under the Carl D. Perkins Vocational and Technology Education Act.

(b) The plan for transition shall address:

1. Projected postschool activities and long-range outcomes including:

a. Adult status (emancipation, full guardianship, limited guardianship);

b. Work (jobs and job training, including competitive, supported, sheltered, volunteer employment, work activity, and military);

c. Postsecondary training and learning (continuing education, such as college, vocational technical school, literacy programs);

d. Home living (independent living with or without support, group-home living, living with parents or relatives, day habilitation, residential);

e. Community participation (accessing community resources, independently, with or without support, or through group participation. Community resources include banking, shopping, public transportation, medical or health services, governmental agencies and services, voting); and

f. Recreation and leisure (preferred free-time activities with or without support).

2. Anticipated needs of the youth related to preparation for postschool activities and achievement of projected long-range outcomes including implications and anticipated adult status of the youth at age eighteen (18); and

3. Steps to be taken to address needs including supplementary services and activities.

(c) **At least** 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 **revise, if necessary, the IEP and** 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
(As Amended)

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) **as defined in 707 KAR 1:210** 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 **Admissions and Release Committee** (ARC) **as described in 707 KAR 1:180** 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 **provide the opportunity** **[~~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 **by** using the following**:**

(a) Ongoing progress data points as measured by IEP implementers:

1. Measurement at the end of instruction;

2. **Measurement at the beginning of instruction after a lapse of instructional time** [~~After a lapse of instructional time, beginning instruction again~~]; and

3. **Measurement** at regular intervals until the performance level is equal to the point at which the lapse in instruction time began; or

(b) [~~4.~~] Tests and observation data collected over a period of time**; or**

(c) The opinion of professionals, based on a professional individual assessment of student regression and recoupment of skills; and

(d) The determination shall not be based on any single criterion.

(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
(As Amended)

707 KAR 1:240. Confidentiality of personally identifiable information.

RELATES TO: KRS 157.200, 157.360, 160.290, 167.150, 20 USC 1232e, 1232g, 1401-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 157.260, 167.015

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes confidentiality requirements for special education programs and is necessary to assure uniformity in providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended, and the Family Educational Rights and Privacy Act, as amended.

Section 1. Definitions. (1) "Access rights" means the rights of the parent, eligible student, and an authorized representative to review and inspect any information collected, used, or maintained by each agency.

(2) "Agency" means any local education agency or other public body established by state or local authority and involved in the identification, evaluation, and education of children and youth with disabilities. The term applies to private schools and facilities approved by the State Board for Elementary and Secondary Education for the purpose of placement or referral by a local education agency of a child or youth with a disability.

(3) "Confidentiality" means the protection of all personally identifiable data, information, and records collected, used, or maintained by an agency in the identification, evaluation, educational placement of a child or youth, or the provision of free appropriate public education for a child or youth with a disability.

(4) "Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(5) "Disclosure" means permitting access to, the release, transfer, and other communication of educational records and any personally identifiable information contained in the records of a child or youth. This includes disclosure made orally, in writing, or by any other means, including electronic transfer of information through a telecommunications system.

(6) "Educational records" means documents and other written

information directly related to a child or youth which are collected, maintained or used by agency personnel. Educational records shall include such records as:

(a) Personal and family data;

(b) Evaluation and test data including aptitude, achievement, interest, intelligence, personality, behavior observation, and other diagnostic information;

(c) Medical, psychological, and anecdotal reports used for educational purposes;

(d) Progress reports;

(e) Written accounts of conferences with children or youth or their parents;

(f) An individual education program (IEP) for a child or youth with a disability;

(g) Copies of correspondence about the child or youth;

(h) Records maintained by other public or private agencies and individuals who have performed services for the agency for educational purposes;

(i) Any information that the agency uses for educational purposes, whether or not initiated or generated by the agency, such as, reports of a psychiatric or psychological evaluation from a community mental health agency; and

(j) Other information or data used in working with the child or youth or required by federal and state administrative regulations.

(7) "Eligible student" means a youth who has reached his 18th birthday or who is attending an institution of postsecondary education. A student shall not be "eligible" if the agency has been notified of a court order establishing full guardianship or limited guardianship for educational services under KRS 210.290.

(8) "Legitimate educational interest" means having custody of records; collecting and using information for identification, evaluation, educational placement of a child or youth, and the provision of a free appropriate public education to a child or youth with disabilities; administering, auditing, enforcing, or monitoring compliance with the federal or state program requirements.

(9) "Personally identifiable" means data or information that include any of the following:

(a) Name of a child or youth;

(b) Name of the parent of a child or youth or other family member;

(c) Address of a child or youth or family members;

(d) A personal identifier, such as Social Security number or an alphanumeric identification code, such as a student number;

(e) A list of personal characteristics or traits which would make identity of a child or youth easily traceable or discernible; or

(f) Other information which would make identity of a child or youth easily traceable.

(10) "Protection" means denial of disclosure, access to, release, transfer, and other communication of educational records and the personally identifiable information contained in those records by any means, including oral, written, or electronic means, to any party for unauthorized or improper use.

(11) A "record" means information recorded in any form including handwriting, print, tapes, braille, diskettes, film, microfilm, microfiche, photographs, or drawings.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have board approved policies and procedures in operation for protection of confidentiality of personally identifiable information that is collected, used, or maintained in the identification, evaluation, and educational placement of children and youth, or in the provision of specially designed instruction and related services for children and youth with disabilities. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Notice. (1) At least once each year, and before any major identification, location, or evaluation activity, each agency shall give notice about confidentiality protections to parents. This notice may be provided in conjunction with the notice the agency gives to meet the requirements of the Family Educational Rights and Privacy Act (FERPA) **regulation (34 CFR Part 99.7)**. The notice shall be published or announced in newspapers or other media or both, with circulation adequate to notify parents throughout the jurisdiction of the agency and include a description of the:

(a) Children and youth with disabilities on whom personally identifiable information is maintained;

(b) Types of information sought;

(c) Methods the agency intends to use to gather the information; including the sources from whom the information may be gathered;

(d) Uses made of the information;

(e) Rights of parents, children, and youth regarding this information, including the rights under FERPA;

(f) Policies and procedures which the agency must follow for storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(g) Extent that the notice is given in the native languages of the various populations within the jurisdiction of the agency.

(2) Whenever the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child or youth, or the provision of a free appropriate public education for a child or youth with disabilities, the agency shall include individual notice about confidentiality requirements to parents in the native language or other mode of communication used by the parent.

Section 4. Access Rights. (1) Each agency shall permit parents to review and inspect any educational record related to the identification, evaluation, and placement of their child or youth, or the provision of a free appropriate public education to the child or youth which are collected, maintained, or used by the agency.

(2) ~~[Treatment records related to a child or youth created and maintained by a physician or mental health professional or paraprofessional and used only in connection with the provision of medical or mental health care shall not be considered educational records.~~

~~(3)~~] If test protocols and raw data generated by an evaluator in conducting an evaluation are accessible or revealed to others, the test protocols and raw data shall become educational records and shall be accessible to parents.

(3) [~~(4)~~] Notes or documents in the sole possession of the maker shall be exempt from access by the parent or eligible student only if the note or document:

(a) Is a private note created solely by the individual possessing it;

(b) Is a personal memory aid; and

(c) The contents are accessible to, or revealed to, no one except the possessor's temporary substitute.

(4) [~~(5)~~] If another person, such as a teacher, is shown or has access to the contents of the notes, then the contents are subject to review by parents or the eligible student. Oral communication from personal notes or documents shall result in the documents accessible to parents for review and inspection.

(5) [~~(6)~~] Each agency shall comply with a parental request to inspect and review records:

(a) Without unnecessary delay;

(b) Before any meeting of the admissions and release committee or any hearing; and

(c) In no case more than forty-five (45) working days after the request is made.

(6) [~~(7)~~] If a parent or eligible student requests, the agency shall provide an explanation and interpretation of the records for the parent, eligible student, or representative.

(7) [~~(8)~~] Copies of the records shall be provided if failure to do so would prevent the parent from exercising the right to review and inspect the records.

(a) Each agency shall make printed (hard) copies of records stored on computers, microfiche, or other such media, if requested,

for inspection.

(b) A fee may be charged for copies. A fee may not be charged if it would prevent access rights. A fee may not be charged for record search or retrieval.

(8) [~~(9)~~] Each agency shall provide educational records consistent with the mode of communication used by the parent of the child or youth, such as a recorded or oral reading. If the parent's primary language is not English, the agency shall provide translation of educational records upon request.

(9) [~~(10)~~] Each agency's procedures may specify the circumstances in which the agency would deny copies; however, the agency cannot have a policy or procedures that would effectively deny or prevent the parent or eligible student from reviewing or inspecting records.

(10) [~~(11)~~] Each agency grants a representative of the parent the right to inspect and review the records. Each agency shall accept a parent's written authorization for a representative to inspect and review the records, whether or not the parent is present, if the authorization:

(a) Is a signed and dated written document;

(b) Contains the purpose of the disclosure; and

(c) Contains the name and title of the authorized representative.

(11) [~~(12)~~] An agency may presume that the parent has the authority to inspect and review records relating to his child unless the agency has been notified that the parent does not have the authority under applicable state law or judicial order governing such matters as separation and divorce.

Section 5. Record of Access. Each agency shall keep a record of all individuals who obtain access to the educational records collected, maintained, or used including the name of the person, the date the person was given access and the purpose for which the person was authorized to see the records. The agency shall not have to keep a record of access when the parent or employees of the agency with a legitimate educational interest use the records.

Section 6. Records on More Than One (1) Child or Youth. If any education record contains information about more than one (1) child or youth, the parent shall have the right to inspect and review only the information relating to the child or youth or to be informed of that specific information.

Section 7. List of Types and Location of Information. If requested by the parent, each agency shall provide the parent a list of the types and location of educational records collected, maintained, and used by the agency. The list shall specify the address where the record is located and the title and phone number of the custodian of the records.

Section 8. Amendment of Records at Parents' Request. A parent who believes that information in educational records is inaccurate, misleading, or violates the privacy or other rights of the child or youth may request the agency to amend the information.

(1) The agency shall decide whether to amend the information in accordance with the parent's request within fourteen (14) calendar days of time of receipt of the request and shall notify the parent whether the information has been amended consistent with the request.

(2) If the agency decides to refuse to amend the information in accordance with the request, it shall provide a written explanation to the parent and advise the parent of the right to a records amendment hearing. A full and complete description of the record amendment hearing procedures used by the agency shall be included with the written explanation.

Section 9. Opportunity for a Hearing. If requested, each agency shall provide an opportunity for a hearing to challenge information in education records to make sure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or youth.

Section 10. Record Amendment Hearing Procedures. A record amendment hearing shall be conducted according to the following procedures:

(1) The hearing shall be held within fourteen (14) working days of the date the agency receives the request.

(2) The agency shall notify the parent of the date, time, and place at least seven (7) working days in advance of the hearing.

(3) The hearing shall be conducted by any individual, including an official of the agency, who does not have a direct interest in the outcome of the hearing.

(4) A parent shall be given a full and fair opportunity to present relevant evidence including:

(a) Presenting witnesses, questioning school employees, and providing oral testimony or written evidence as to the inaccurate or misleading information in the educational record; and

(b) Being represented by one (1) or more persons at his own expense including an attorney.

(5) The decision shall be issued in writing within fourteen (14) calendar days of the date of the hearing.

(6) The decision shall be based solely on the evidence presented at the hearing and the applicable law and shall include a summary of the evidence and the reasons for the decision.

Section 11. Result of Hearing. (1) If, as a result of the hearing, the agency decides the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child or youth, the agency shall amend the information accordingly and so inform the parent in writing.

(2) If, as a result of the hearing, the agency decides the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child or youth, it shall inform the parent of the right to place in the records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the child or youth under this section shall:

(a) Be maintained by the agency as part of the records of the child or youth as long as the record or contested portion is maintained by the agency; and

(b) Be disclosed as part of the records as long as the record or contested portion is maintained by the agency.

Section 12. Consent. (1) Parental consent, which specifies the records to be released and to whom, shall be obtained before personally identifiable information is:

(a) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to subsection (2) of this section; or

(b) Used for any purpose other than meeting a requirement under this part.

(2) An agency may not release information from education records to other agencies without parental consent unless the agency's public notice explains the agency's disclosure policy.

(3) If a parent refuses to provide consent to release records which are needed to provide a free appropriate public education for a child or youth and the LEA disagrees with the refusal, a due process hearing shall be requested.

Section 13. Safeguards. (1) Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) One (1) official at each agency shall be assigned responsibility for protecting the confidentiality of any personally identifiable information.

(3) All persons collecting or using personally identifiable information shall receive training or instruction regarding the agency's policies and procedures for confidentiality.

(4) Each agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Section 14. Destruction of Information. (1) Each agency shall inform the parent when personally identifiable information which has been collected, maintained, or used in the identification, evaluation, educational placement, or provision of a free appropriate public education is no longer needed to provide educational services to the child or youth. In informing a parent about his rights under this section, the agency shall remind him that the records may be needed by the youth or the parent for Social Security benefits or other purposes.

(2) If requested by the parent, the agency shall destroy the information that is no longer needed. However, a permanent record of a student's name, address, and phone number, his grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. The agency shall not destroy education records if:

(a) There is an outstanding request to review and inspect them exists;

(b) They are maintained for documentation of compliance with program requirements of the Individuals with Disabilities Education Act (IDEA) or the Education Department general administrative regulations.

(3) Personally identifiable information on a child or youth with disabilities may be retained permanently unless the parent requests that it be destroyed.

Section 15. Rights of the Child or Youth. (1) Each agency shall notify the parent at least one (1) year before a youth's 18th birthday that the rights regarding review, inspection, and disclosure of records will transfer to the youth at the age of eighteen (18) unless the agency is provided with evidence that a court order or legal document proves the parent is the guardian or youth's representative in educational matters.

(2) An agency shall not disclose educational records of a youth over the age of eighteen (18) to the parent without:

(a) The youth's written consent;

(b) A court order; or

(c) Proof that the youth is a dependent student as defined in Section 152 of the Internal Revenue Code of 1954.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 14, 1993
FILED WITH LRC: April 15, 1993 at noon

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(As Amended)

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 **as described in 707 KAR 1:180**, 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) **as defined in 707 KAR 1:210,** 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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(As Amended)

707 KAR 1:260. Comprehensive system of personnel development.

RELATES TO: KRS 157.200, 157.250, 160.290, 20 USC 1232e, 1413-1414

STATUTORY AUTHORITY: KRS 156.070, 157.220, 157.360

NECESSITY AND FUNCTION: KRS 157.200 sets forth the state statutory framework for special education programs for children and youth with disabilities. This administrative regulation establishes requirements for special education programs and is necessary to assure uniformity in qualified personnel providing specially designed instruction and related services to children and youth with disabilities and to conform with the Individuals with Disabilities Education Act, as amended.

Section 1. Definitions. (1) "Continuing education" means increasing the knowledge base and teaching expertise through preservice and professional development activities for qualified personnel employed to provide services for children and youth with disabilities.

(2) "Leadership personnel" means any person employed by the local education agency (LEA), **as defined in 707 KAR 1:160,** in an administrative or supervisory position with the authority or responsibility for providing or supervising services for children and youth with disabilities.

(3) "Qualified personnel" means that an individual has met Kentucky Department of Education (KDE) approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which he is providing specially designed instruction or related services.

Section 2. Policies and Procedures. Each local education agency (LEA) shall have local board approved policies and procedures in operation for implementation and use of the Comprehensive System of Personnel Development established by KDE. Policies and procedures shall address each requirement in this administrative regulation.

Section 3. Data Collection. Annually each LEA shall determine if there is an adequate supply of qualified personnel exists, including leadership personnel, in each profession or discipline by collecting the number and type of personnel employed and needed to provide specially designed instruction and related services.

(1) The number and type employed shall include personnel who meet full certification or licensure requirements, and personnel who are employed on emergency, probationary, one (1) year provisional, or restricted certification.

(2) The LEA shall annually collect, interpret and report data consistent with the requirements of the annual data report to determine:

(a) The number and type of personnel employed to provide

specially designed instruction;

(b) The number and type of personnel employed to provide related services;

(c) The number and type of new personnel needed to provide specially designed instruction;

(d) The number and type of new personnel needed to provide related services;

(e) The number and type of personnel requiring continuing education for providing specially designed instruction and related services; and

(f) The content areas in which continuing education is needed for providing specially designed instruction and related services.

(3) The LEA shall project the number and type of personnel, including leadership personnel, needed:

(a) Currently;

(b) Based on a five (5) year projection determined by individuals to be served; and

(c) Based on attrition of personnel.

(4) The LEA shall use a variety of data sources for determining needs including vacancies, retirees, student teacher ratio, monitoring reports, and corrective action plans.

Section 4. Recruitment and Retention. Each LEA shall take steps to recruit and retain new or additional personnel, including minorities and personnel with disabilities, by actively seeking to employ and retain qualified personnel to provide services for children and youth with disabilities.

Section 5. Personnel Preparation and Continuing Education. Each LEA shall make sure that all personnel needed to implement Part B of the IDEA are appropriately and adequately prepared including:

(1) Continuing the education opportunities for regular, special education, and related services personnel involved in the identification, evaluation, and education of children and youth with disabilities;

(2) Notifying the special education and related services personnel of training and conference dates and other pertinent information related to continuing education opportunities.

Section 6. Dissemination of Significant Information. (1) Each LEA shall have local board approval for effective procedures for:

(a) Acquiring and disseminating to teachers and administrators involved in the education of children and youth with disabilities significant information derived from educational research, demonstrations, and similar projects; and

(b) Adopting, where appropriate, promising educational practices, materials, and technology developed through such projects.

(2) The LEA shall acquire information about:

(a) Research findings;

(b) Demonstration projects; and

(c) Products and programs proven successful in educating children and youth with disabilities.

(3) The LEA shall review information obtained by comparing written criteria established by the LEA to make decisions about dissemination and adoption. The review process shall include defining significant information as it relates to the LEA's needs or goals.

(4) The LEA shall disseminate significant information acquired about special education practices, programs, materials or technology proven effective, ineffective, or even harmful for children and youth with disabilities through research or demonstration to:

(a) Teachers;

(b) Leadership personnel; and

(c) Related services personnel.

(5) The LEA shall make sure the use of any practice or product proven ineffective, inefficient, or harmful to children and youth with disabilities is discontinued.

Section 7. Adoption of Promising Practices. Each LEA shall adopt new programs, practices, materials or technology, as necessary, according to written criteria established to assess the appropriateness for use in the LEA. When new educational practices and products are initiated, the LEA shall:

(1) Develop written criteria for measuring effectiveness;

(2) Train personnel prior to initiating new programs or practices;

(3) Maintain data to assess effectiveness; and

(4) Use the data for decisions about continuing the practice or use of the product.

Section 8. Qualified Personnel. Each LEA shall employ or contract with qualified personnel, including leadership personnel, to provide specially designed instruction and related services, and ensure that all personnel necessary to implement the requirements of Part B of the IDEA are appropriately and adequately prepared.

(1) The LEA's program for recruiting, hiring, and retaining personnel shall be consistent with the state's requirements for certification, licensing, and registration which apply to any area in which an individual is providing specially designed instruction and related services.

(2) If two (2) or more applicants or contractors are available, the LEA shall employ the applicant or contractor who has, at a minimum, the entry-level requirement needed for any state-approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) The LEA shall make sure that personnel assigned as teachers of children or youth with disabilities who are not certified in the area for which they are providing services, have probationary, one (1)year provisional, or restricted certification in that area.

(a) The LEA shall make sure that personnel who are not fully certified are currently enrolled in a program to complete certification requirements.

(b) If a certified teacher is not available, the LEA shall:

1. Follow the procedures prescribed in 704 KAR 20:510 and 704 KAR 20:120; and

2. Make sure the teacher is notified of the requirements for certification renewal.

(4) If qualified personnel, including leadership personnel, vacate a position during the school year, the LEA shall fill the position with a qualified individual.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: April 14, 1993
FILED WITH LRC: April 15, 1993 at noon

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(As Amended)

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. **(1) "Technical Institute Standards and Measures (May 21, 1993)" is incorporated by reference.**

(2) It may be obtained, copied or inspected at the office of the Kentucky Tech System, Capital Plaza Tower, 3rd Floor, 500 Mero Street, Frankfort, Kentukcy 40601, 8 a.m. to 4:30 p.m., Monday through Friday. [~~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 PROTECTION AND REGULATION CABINET
Department of Mines and Minerals
(As Amended)

805 KAR 3:010. Definitions.

RELATES TO: KRS 351.010, 352.010 [~~351.070~~]
STATUTORY AUTHORITY: KRS Chapter 13A, 351.070
NECESSITY AND FUNCTION: This regulation establishes [~~is to provide~~] definitions of important terms used in the regulation of [~~Commonwealth's Safety Standards controlling~~] the operation of surface [~~type~~] coal and clay mines, which include strip and auger mining operations.

Section 1. Definitions. (1) **"Accepted" means tested and approved for a specific purpose by a nationally recognized safety agency.**

(2) "Active workings" means any place in a coal or clay mine where miners are normally required to work or travel in the performance of their duties.

(3) [~~(2)~~] "American Table of Distances" means the current edition of "the American Table of Distances for Storage of Explosives" published by the Institute of Makers of Explosives.

(4) [~~(3)~~] "ANFO" means ammonium nitrate-fuel oil mixtures.

[~~(4) "Approved" means tested and accepted for a specific purpose by a nationally recognized safety agency.~~]

(5) "Barricaded" means obstructed to restrict the passage of persons, vehicles or flying materials.

(6) "Berm" means a pile or mound of material capable of restraining a vehicle; also a shelf, ledge, or material placed to contain loose slope material.

(7) "Blasting agent" means a cap insensitive chemical composition or mixture consisting of fuel and oxidizer and no explosive ingredient but which can be made to detonate when initiated with a high strength explosive primer.

(8) "Blasting area" means the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury.

(9) "Blasting cap" means a detonator containing a charge of detonating compound, which is ignited by electric current or the spark of a fuse and [~~. It is~~] used for detonating explosives.

(10) "Blasting circuit" means electric circuits used to fire electric detonators or to ignite an igniter cord by means of an electric starter.

(11) "Blasting switch" means a switch used to connect a power source to a blasting circuit.

(12) "Box-type magazine" means a small, portable magazine used to store limited quantities of explosives or detonators for short periods of time in locations at the mine which are convenient to the blasting sites at which they will be used.

(13) "Capped fuse" means a length of safety fuse to which a detonator has been attached.

(14) "Capped primer" means a package or cartridge of explosives which is specifically designed to transmit detonation to other explosives and which contains a detonator.

(15) "Combustible" means capable of being ignited and consumed by fire.

(16) [~~"Commissioner" means Commissioner of the Department of Mines and Minerals.~~

~~(17)~~] "Company official" means a member of the company supervisory or technical staff.

(17) [~~(18)~~] "Competent person" means a person having abilities that fully qualify him to perform the duty to which he is assigned.

[~~(19) "Department" means the Department of Mines and Minerals.~~]

(18) [~~(20)~~] "Detonating cord" or "detonating fuse" means a flexible cord containing a core of high explosive.

(19) [~~(21)~~] "Detonator" means a device containing a small detonating charge that is used for detonating an explosive, including but not limited to blasting caps, exploders, electric detonators, and delay electric blasting caps.

(20) [~~(22)~~] "Distribution box" means a portable apparatus with an enclosure through which an electric circuit is carried to one (1) or more cables from a single incoming feedline, each cable circuit being connected through individual overcurrent protective devices.

(21) [~~(23)~~] "Electric blasting cap" means a blasting cap designed for and [~~an~~] capable of being initiated by means of an electric current.

(22) [~~(24)~~] "Electric grounding" means to connect with the ground to make the earth part of the circuit.

(23) [~~(25)~~] "Employee" means a person who works for wages or salary in the service of an employer.

(24) [~~(26)~~] "Employer" means a person or organization employing one (1) or more persons to work for wages or salary.

(25) [~~(27)~~] "Explosive" means any chemical compound, mixture or device the primary or common purpose of which is to function by explosion and includes [~~. Explosives include but are not limited to~~] black powder, dynamite, nitroglycerine, fulminate, and ammonium nitrate when mixed with a hydrocarbon plus high explosive ingredients.

(26) [~~(28)~~] "Face or wall" means that part of any mine where excavating is progressing or was last done.

(27) [~~(29)~~] "Flammable" means capable of being easily ignited and of burning rapidly as defined by the National Fire Protection Association.

(28) [~~(30)~~] "Highway" means any public road or travelway used by the general public.

(29) [~~(31)~~] "Ignited cord" means a fuse, cordlike in appearance, which burns progressively along its length with an external flame at the zone of burning, and is used for lighting a series of safety fuses in the desired sequence.

(30) [~~(32)~~] "Inhabited building" means a building regularly occupied in whole or in part as a habitation for human beings or any church, schoolhouse, railroad station, store, factory, or other structure where people are accustomed to assembly, but does not include [~~except~~] any building or structure occupied in connection with the manufacture, transportation, storage or use of explosives.

[~~(33) "Low voltage" means up to and including 660 volts, "medium voltage" means voltages from 661 to 1,000 volts, and "high voltage" means more than 1,000 volts.~~]

(31) [~~(34)~~] "Magazine" means a storage place for explosives or

detonators.

(32) [~~(35)~~] "Major electrical installation" means an assemblage of stationary electrical equipment for the generation, transmission, distribution or conversion of electric power.

(33) [~~(36)~~] "Misfire" means the complete or partial failure of a blasting charge to explode as planned.

(34) [~~(37)~~] "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials or ores that are to be mined.

(35) [~~(38)~~] "Primer" or "booster" means a package or cartridge of explosives which is designated specifically to transmit detonation to other explosives and which does not contain a detonator.

(36) [~~(39)~~] "Qualified person" means, as the context requires:

(a) An individual deemed qualified by the commissioner and designated by the operator to make tests and examinations; and

(b) An individual deemed by the commissioner to be qualified by training, education, and[~~/or~~] experience to perform electrical work, to maintain electrical equipment and to conduct examinations and make tests of electrical equipment used at the mine for which he is assigned such responsibility.

(37) [~~(40)~~] "Reverse-current protection" means a method or device used on direct-current circuits of equipment to prevent the flow of current in the reverse direction.

(38) [~~(41)~~] "Roll protection" means a framework or safety canopy to protect the vehicle operator if equipment should overturn.

(39) [~~(42)~~] "Safety can" means an approved container of not over five (5) gallons capacity having a spring-closing lid and spout cover.

(40) [~~(43)~~] "Safety fuse" means a train of powder enclosed in cotton, jut yarn, and waterproofing compounds which burns at a uniform rate and [~~;~~] used for firing a cap containing the detonating compound, which in turn sets off the explosive charge.

(41) [~~(44)~~] "Safety switch" means a sectionalizing switch that also provides shunt protection in blasting circuits between the blasting switch and the shot area.

(42) [~~(45)~~] "Scaling" means removal of insecure material from a face or highwall.

(43) [~~(46)~~] "Secondary safety connection" means a second connection between a conveyance and rope, intended to prevent the conveyance from running away or falling in the event the primary connection fails.

(44) [~~(47)~~] "Semiconductive hose" means hose having an electrical resistance of not less than 5,000 ohms per foot and not more than two (2) megohms for its total length, used in pneumatic placement of blasting agents in bore holes.

(45) [~~(48)~~] "Sprung hole" means a blasting hole chambered or enlarged to take an increased charge of explosives.

(46) [~~(49)~~] "Stemming" means the [~~inert material and the~~] placing of [~~such~~] material on top of any charge of explosives.

(47) [~~(50)~~] "Stray current" means that portion of a total electric current that flows through paths other than the intended circuits.

(48) [~~(51)~~] "Substantial construction" means construction of such strength, material and workmanship that the object will withstand all reasonable shock, wear, usage and deterioration to which it will normally be subjected.

(49) [~~(52)~~] "Suitable" means that which fits and has the qualities or qualifications to normally meet a given purpose, occasion, condition, [~~or~~] function, or circumstance.

(50) [~~(53)~~] "Travelway" means a passage, walk or way regularly used and designated for person to go from one (1) place to another while at work.

(51) [~~(54)~~] "Wet drilling" means the continuous application of water to the back or bottom of the drill holes while drilling.

(52) [~~(55)~~] "Working place" means any place in or about a mine where work is being performed.

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner

APPROVED BY AGENCY: July 8, 1993
FILED WITH LRC: July 8, 1993 at 2 p.m.

CABINET FOR HUMAN RESOURCES
Interim Office of Health Planning & Certification
(As Amended)

902 KAR 20:004. 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

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) **"Affected persons" is defined by KRS 216B.015(2).**

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

(3) [~~(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).

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

(5) "Emergency circumstances" means an act of God, fire, vandalism, structural or mechanical failure, other situations that pose a threat to life, health, or safety if not acted upon immediately, and the unavailability of ambulance services within a thirty (30) minute response time.

(6) [~~(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.

(7) [~~(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.

(8) [~~(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.

(9) [~~(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.

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

(11) [~~(9)~~] "Public information channels" means the Office of Communications in the Cabinet for Human Resources.

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

(13) [~~(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, **an applicant shall provide and** the hearing officer shall utilize the following **information** [~~criteria~~]:

(1) **Consistency with state plan. Whether the proposal is consistent with the state health plan.** [~~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.**

(a) The need that the population that is to be served has for the services proposed to be offered or expanded;

(b) The extent to which residents of the area to be served, in particular members of medically under-served groups, are likely to have access to the services;

(c) Whether the proposed service will assist in meeting the health needs of members of medically under-served groups, by:

1. Comparing the percentage of the medically under-served in the applicant's service area that currently use the applicant's service with the percentage of the medically under-served who will use the proposed services if the application is approved; and

2. Determining the means, such as a clinic or emergency room and excluding admission by a physician, by which a person will have access to its services. [~~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).~~]

(d) [~~(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.

(e) [~~(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.

(f) The special needs and circumstances of an entity, such as a medical and other health profession school, multidisciplinary clinic, or specialty center, that provides a substantial portion of its services or resources to persons who do not reside in the:

1. Health service area in which the entity is located; or

2. Adjacent health service areas.

[~~(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.~~]

(g) [~~(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) **For proposed** [~~In the case of~~] health services or facilities [~~proposed to be provided~~], the efficiency and appropriateness of the use of **similar** 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, **including** [~~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:**

1. Resources, including health personnel, management personnel, and funds for capital and operating needs; and

2. Alternative uses of resources for the provision of other health services. [~~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) **For** [~~In the case~~] of construction or renovation projects **the**:

1. [~~The~~] Costs and methods of the **project** [~~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:

a. Costs of providing health services by the **applicant;** [~~persons proposing the construction or renovation project~~] and

b. [~~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. **(a)** [~~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

(b) The qualifications of the principals who will provide the health service which would assure that quality care will be provided; and

(c) Any perceivable detrimental effects of the proposal on the quality of similar services in the area **including:** [~~to include:~~] [~~.~~

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

1. [~~(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**; and** [~~.~~]

2. [~~(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. **Letter of Intent. (1) At least thirty (30) days prior to submitting an application for a certificate of need, an applicant shall file a letter of intent with the Interim Office on "Letter of Intent Form #1".**

(2) A letter of intent shall be valid for one (1) year.

(3) If an application is denied, a new letter of intent shall be filed in order to resubmit an application.

(4) If an application is withdrawn prior to a final decision, a new letter of intent shall be filed.

(5) A letter of intent shall not be required for a request for nonsubstantive review under the provisions of Section 8 of this administrative regulation.

Section 5. Application For Certificate Of Need. (1) Upon receipt of a letter of intent, the interim office shall:

(a) Acknowledge receipt of the letter of intent; and

(b) Provide an applicant with, as applicable:

1. "Certificate of Need Application Form #2a"; or

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

(2) An original, and two (2) copies of, a certificate of need application shall be filed with the interim office as provided by the schedule established by Section 6 of this administrative regulation.

(3)(a) Fifteen (15) days after receipt of an application, the interim office shall:

1. Acknowledge receipt of the application; and

2. Notify the applicant whether the application is complete.

(b) If an application is not complete, the notice shall state that the applicant shall:

1. Complete the application by submitting specific additional information; or

2. Notify the interim office that its application shall be processed as submitted.

(4) Upon receipt of an applicant's response, the interim office shall:

(a) Deem an application complete; and

(b) Notify the applicant of the beginning of the review.

(5)(a) An application shall be included in the next appropriate public notice of review, if it has been declared complete at least six (6) working days prior to the date of the public notice.

(b) After an application has been declared complete, an applicant may submit additional information to be made part of the public record only at the public hearing.

(6)(a) The notification of the beginning of the review shall include the:

1. Schedule for the review; and

2. Period during which a public hearing may be requested by the applicant and other affected persons.

(b) Notice to members of the public, and third party payors, shall be provided through public information channels.

(c) Notice to all other known affected persons shall be by mail. [~~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.~~]

Section 6. Review of Certificate of Need Application. (1) [~~(9)~~] Batching review cycles shall be as follows:

TYPE OF PROPOSAL	Applications **shall** [~~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 **shall** [~~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)~~] **shall** [~~will~~] be processed in accordance with KRS 216B.095(1).			

(2) [~~(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.

(3) [~~(11)~~] The written notification shall include:

(a) Verification that the criteria have been met**;**

(b) [~~or,~~] If the application is inconsistent with any criteria, the reasons for approval notwithstanding the inconsistency;

(c) [~~(b)~~] Amount of capital expenditure authorized, where applicable;

(d) [~~(c)~~] If the application is disapproved, the reasons for the disapproval; and

(e) [~~(d)~~] Notice of appeal rights.

(4) If an application is [~~(12) All applications~~] not declared complete with a year from the date of filing **it** shall expire and shall not be reviewed.

(5) [~~(13)~~] If an application for certificate of need is disapproved, it **shall** [~~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 **6.** [~~5.~~] Certificate of Need Hearings. (1) Notice of the date, time and location of the hearing shall be**:**

(a) Given to third party payors and members of the public through public information channels; and

(b) Mailed to other known affected persons at least ten (10) days before the date of the hearing.

(2)(a) A hearing request may be withdrawn by written request filed with the interim office.

(b) If a hearing has been scheduled, a written request to withdraw shall be accepted if it is received by the interim office at lest three (3) working days prior to the scheduled hearing date.

(c) A public hearing shall be canceled if all persons who requested the hearing agree in writing to its cancellation.

(d) Agreement of other affected persons shall not be required. [~~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) A hearing officer [~~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) A [~~The~~] hearing officer may, 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~~] **a list of** [~~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) **A hearing officer may:**

(a) Place reasonable time limits upon the presentation of testimony, evidence, and argument; and

(b) Terminate or exclude irrelevant or redundant evidence, testimony, or argument.

(6) Except for the exchange of exhibits, prehearing discovery of an affected person by another affected person shall not be permitted.

(7) Upon completion of the hearing, the record on a certificate of need application shall be:

(a) Final for evidentiary purposes; and

(b) Reopened only upon order of the hearing officer. [~~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 7. [~~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 8. [~~7.~~] Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), **a proposal specified in this section that requires approval of a certificate shall be granted for nonsubstantive review status.** [~~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:

1. [~~a.~~] Office is notified in writing prior to an action; and

2. [~~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) **No later than ten (10) days after an application has been deemed complete, a decision by a hearing officer on a request for nonsubstantive review shall be mailed to the applicant. A notice of a decision to conduct a nonsubstantive review shall be:**

1. Given to third party payors and members of the public through public information channels; and

2. Mailed to other known affected persons. [~~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 9. [~~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 the [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 10. [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 11. [10.] Timetables and Standards for Implementation. **(1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on "Progress Report Form #8" at the six (6) month intervals specified in this section.**

(2)(a) A notice specifying the date each progress report is due shall be sent to a holder of a certificate of need.

(b) The interim office shall review a progress report and shall:

1. Determine whether the items required to be completed during the six (6) month period covered by the progress report have been completed; and

2. If the items have not been completed, whether sufficient reasons for failure to complete have been provided.

(3) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure and occupancy by the Division of Licensing and Regulation; or

(b) The appropriate license has been obtained; and

(c) A final cost breakdown has been submitted; and

(d) For projects for which a certificate of need has been issued for a specific service area, documentation that services are being provided to all of the licensed service area has been submitted.

(4) Until a project has been deemed complete by the interim office, if the information submitted is deemed incomplete, or otherwise deficient, the interim office may require:

(a) The submission of additional reports; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(5) If the interim office determines that the items have not been completed for reasons other than those set forth in paragraph (c) of this subsection, for the failure to complete, it shall notify the holder of the certificate of need, in writing, that:

(a) It has determined to revoke the certificate of need;

(b) The revocation shall become final thirty (30) days from the date of the notice of revocation, unless the holder requests a hearing to show cause why the certificate of need shall not be revoked.

(c) A certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure to complete the items required was due to emergency circumstances, or other causes that:

1. Could not reasonably be anticipated and avoided by the holder; or

2. Were not the result of action or inaction of the holder.

[(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.]

(6) [(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 **or** [/] 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.]

(7) [(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.

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

(a) For construction **or** [~~/~~] 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) [~~(e)~~] 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~~].

(9) [~~(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.

(10) [~~(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 **or** [~~/~~] renovation projects.

(11) [~~(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.

(12) [~~(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.~~]

(13) [~~(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.

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

Section **12.** [~~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 **13.** [~~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 **14.** [~~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.

Section 15. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

GREG LAWTHER, Acting Executive Director
FONTAINE BANKS, Secretary
APPROVED BY AGENCY: April 29, 1993
FILED WITH LRC: May 5, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

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) "Adequate supervision" means that qualified staff devote full time and attention to the children being supervised and **be aware of their whereabouts at all times and within range of voice.** [~~keep the children within sight and sound.~~]

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

(3) [~~(2)~~] "Caregiver" means child day care staff, including volunteers, who work in a child day care facility.

(4) [~~(3)~~] "Child day care staff" means persons, including volunteers, who work in a child day care facility.

(5) [~~(4)~~] "Day care" means care of a child in a facility which regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(6) [~~(5)~~] "Director" means an individual who meets the education and training requirements as specified in 905 KAR 2:110, Section 3, and whose primary full-time job responsibilities are to ensure compliance with 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:130; and who is responsible for directing the program and for managing the staff at the day care facility specified in their individual job description. [~~or "provider" means the person responsible for the day to day operation of a facility or program for the care of children.~~]

(7) [~~(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 **shall be included** [~~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 **kindergarten** [~~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.

10. A facility providing instructional and educational programs for children:

a. That is operated for a maximum of four (4) hours per day or twenty (20) hours per week; and

b. Which a child attends for no more than two (2) hours per day or ten (10) hours per week.

(8) [~~(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) Certified 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.

(9) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:

(a) A continuing condition;

(b) A recurring condition; or

(c) A condition which has caused death or serious physical injury within the past two (2) weeks.

(10) [~~(8)~~] "Infant " means a child under one (1) year of age.

(11) "Licensee" means an individual, partnership, corporation or other entity authorized to operate a day care center.

(12) [~~(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.

(13) [~~(10)~~] "Premises" means the building and contiguous property in which day care is provided and licensed.

(14) [~~(11)~~] "Qualified substitute" means a person who meets the requirements of a caregiver.

(15) [~~(12)~~] "Regularly" means the provision of child day care services at a facility for more than ten (10) hours per week.

(16) [~~(13)~~] "Related" means the children, grandchildren, nieces, nephews, or children in legal custody of the operator of the facility.

(17) [~~(14)~~] "Secretary" means the Secretary for the Cabinet for Human Resources.

(18) [~~(15)~~] "School-age child" means a child attending kindergarten, elementary or secondary education.

(19) [~~(16)~~] "Tactile activities" means activities of or relating to the sense of touch.

(20) [~~(17)~~] "Toddler" means a child between the age of twelve (12) months and twenty-four (24) months.

(21) [~~(18)~~] "Twelve (12) clock hours of annual training" means a

Cabinet for Human Resources approved program, **in compliance with the Guidelines for Obtaining Child Day Care Training Approval, and herein incorporated by reference,** of child development training that is completed by employees and owners who directly care for children as governed by KRS 199.896.

(22) [~~(19)~~] "Twelve (12) clock hours of orientation and child development training" means a Cabinet for Human Resources approved program, **in compliance with the Guidelines for Obtaining Child Day Care Training Approval, and herein incorporated by reference,** 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 of employment.

Section 2. Incorporation by Reference. (1) The Guidelines for Obtaining Child Day Care Training Approval revised July 1993 shall be incorporated by reference.

(2) Material incorporated by reference may be inspected or copies obtained 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.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

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 for reasons set forth in Section 6(1)(b) or (c) of this administrative regulation 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 of the statement of deficiencies. 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 of notice of the plan's unacceptability.

(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 **be trained to apply the administrative regulations and** [~~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 renewal application and fee shall be submitted one (1) month prior to the expiration date of the license.

(3) [~~(2)~~] The facility shall comply with the requirements of Sections 2 and 4 of this administrative regulation.

Section 6. Basis for Denial, Suspension or Revocation. (1) The Cabinet for Human Resources may deny, suspend or revoke a license or application:

(a) [~~(1)~~] For failure to meet the standards of this administrative regulation;

(b) [~~(2)~~] If the licensee [~~provider~~], an adult living in the facility [~~provider's home~~] or person under the supervision of the licensee [~~provider~~] has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult;

(c) [~~(3)~~] If the licensee or [~~provider,~~] an adult living in the facility [~~provider's home~~]:

1. [~~(a)~~] Has abused, neglected or exploited a child or an adult; or

2. [~~(b)~~] Is listed on the Nurse's Aid Abuse Registry by the Inspector General's Office.

(2) [~~(4)~~] If the licensee [~~provider~~] has had a human services center or facility registration, certification, permit or license denied for reasons set forth in subsection (1)(b) or (c) of this section or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet initiates denial for reasons set forth in subsection (1)(b) or (c) of this section or revocation action.

(3) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the cabinet may suspend or revoke the license immediately.

Section 7. [~~6.~~] Right of Appeal. (1) If a license or application has been denied, suspended 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 cabinet [~~secretary~~].

(2) Upon receipt of the request for a hearing:

(a) The cabinet [~~secretary or his representative~~] shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing.

(b) The cabinet [~~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 a provider whose license has been suspended or revoked pursuant to Section 6(3) of this administrative regulation requests a hearing, the cabinet shall conduct a hearing within five (5) working days of receipt of the request for a hearing. The hearing may be continued at the request of the provider.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the children in care.

(b) The cabinet shall render a decision within five (5) working days of the close of the hearing. If a decision is not rendered within five (5) working days of the close of the hearing, the provider shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the children in care, the license of the provider shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

[~~(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 8. [~~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: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

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) "Adequate supervision" means that qualified staff devote full time and attention to the children being supervised and keep the children within sight and sound.

(2) "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.

(3) [~~(2)~~] "Cabinet" means the Kentucky Cabinet for Human Resources.

(4) [~~(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.

(5) [~~(4)~~] "Commissioner" means the Commissioner for the Department for Social Services.

(6) [~~(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.

(7) [~~(6)~~] "Home" means the private primary residence of the provider.

(8) [~~(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) Certified 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.

(9) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:

(a) A continuing condition;

(b) A recurring condition; or

(c) A condition which has caused death or serious physical injury within the past two (2) weeks.

(10) [~~(8)~~] [~~(7)~~] "Infant" means a child under one (1) year of age.

(11) [~~(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.

(12) [~~(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~~].

(13) [~~(11)~~] [~~(10)~~] "Provider's own child" means the providers's own children and children in legal custody.

(14) [~~(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.

(15) [~~(13)~~] [~~(12)~~] "Related child" means a certified provider's grandchildren, nieces and nephews.

(16) [~~(14)~~] [~~(13)~~] "School-age child" shall be considered as one attending kindergarten or above.

(17) [~~(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.

(18) [~~(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.

(19) [~~(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 **be trained to apply the administrative regulation and** 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 for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation 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 **excluding the provisions of Section 5(3)(a) and (b) of this administrative**

regulation which shall be met within three (3) months of the application date, 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 **change of location [~~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. The provider shall submit a new application and fee one (1) month prior to the expiration of the certification.

Section 3. Denial, Suspension, or Revocation. (1) [~~(2)~~] The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(a) [~~(1)~~] [~~(a)~~] Provider, [~~or~~] an adult living in the provider's home or person under the supervision of the provider:

1. [~~(a)~~] [~~1.~~] Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or

2. [~~(b)~~] [~~2.~~] Refuses to provide a criminal records check; [~~or~~]

(b) [~~(2)~~] Provider or/and an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(c) [~~(3)~~] Provider [~~(b) Family child care home~~] fails to comply with certification standards set forth in this administrative regulation; or

(d) [~~(4)~~] Provider has had a human services center or facility registration, certification, permit or license denied for reasons set forth in paragraph (a) or (b) of this subsection or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in paragraph (a) or (b) of this subsection or revocation action.

[~~(3) The provider shall obtain liability insurance.~~]

(2) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

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) The hearing officer shall have 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.

(5) [~~(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.

(6) If a provider whose certification has been suspended or revoked pursuant to Section 3(2) of this administrative regulation request a hearing, the department shall conduct a hearing within five (5) working days of receipt of the request. The hearing may be continued at the request of the provider.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the children in care.

(b) The department shall render a decision within five (5) working days of the close of the hearing. If a decision is not rendered within five (5) working days of the close of the hearing, the provider shall have its certification returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the children in care, the certification of the provider shall be suspended pending action of the department to accept the plan of correction or revoke the certification.

(7) [~~(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.~~]

(8) [~~(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 **in compliance with the Guidelines for Obtaining Child Day Care Training revised July 1993 incorporated by reference in 905 KAR 2:001**.

(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 have [~~employ~~] an assistant present.

(c) [~~(b)~~] A certified provider shall not care for more than six (6) children under the age of six (6) years old, including [~~. 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 **in the amount of $50,000 per occurrence**.

(4) The provider shall be currently certified in:

(a) Infant and child cardiopulmonary resuscitation (CPR) by:

1. The American Red Cross;

2. The American Safety Council; or

3. The American Heart Association; and

(b) Infant and child first aid by:

1. The American Red Cross; or

2. The American Safety Council.

(c) ~~[The effective date of]~~ This subsection shall be **enforced beginning** July 1, 1994. ~~[However, the effective date of]~~ This subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon accessibility of training in all areas of the Commonwealth. ~~[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 allow[s] 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 a federally- [~~an~~] approved motor vehicle 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.

(8) [~~(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.

(9) [~~(10)~~] Infants in care shall be held during feeding and bottles shall never be propped.

(10) [~~(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.

(11) [~~(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.

(12) [~~(13)~~] Provide opportunities for outdoor play or fresh air.

(13) [~~(14)~~] Be able to recognize symptoms of childhood illnesses.

(14) [~~(15)~~] Visually supervise children who are awake and be able to respond to the children immediately.

(15) [~~(16)~~] Be able to provide basic first aid.

(16) [~~(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) **The DSS-78, Application for Family Child Care Certification, revised September 1993, and the DSS-79, Self Check List, revised September 1993, shall be herein incorporated by reference.** [~~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: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

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) Caregivers shall provide adequate supervision of children while in the care of the facility.

(9) 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.

(10) [~~(9)~~] Parents or persons exercising custodial control of a child shall be permitted to visit the facility during regular hours of operation.

(11) [~~(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 staff child ratios as governed by 905 KAR 2:120, Section 1 [~~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) **Written records of training participation for each center employee, including the training source, location, date, and number of clock hours obtained;** [~~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 in a conspicuous place to be available 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 licensure [~~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; **and**

[~~5. A copy of each court order pertaining to the quality of care or services provided in the facility; and~~]

5. [~~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) Not be employed in a position other than a child care director during the hours the day care facility is in operation; and

(d) [~~(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 **including degrees in pastoral care and counseling**, 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 day 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 day 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 day 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) Not be employed in a position other than a child care director during the hours the day care facility is in operation; and

(f) Meet one (1) of the following requirements:

1. Certificate in child development services from Kentucky Tech or local school system (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 day care; or

3. Obtain six (6) additional hours of training in child day care program administration.

(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 subsections (1) and (2) 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 **or adult** [~~as specified in 905 KAR 2:090, Section 6(2)~~];

(b) A staff person shall be on duty who is currently [~~annually~~] certified in: [~~cardiopulmonary resuscitation (CPR), and currently trained in first aid by a certified instructor approved by the cabinet.~~]

1. Infant and child cardiopulmonary resuscitation (CPR) by:

a. The American Red Cross;

b. The American Safety Council; or

c. The American Heart Association; and

2. Infant and child first aid by:

a. The American Red Cross; or

b. The American Safety Council.

3. [~~The effective date of~~] This subsection shall be **enforced beginning** July 1, 1994. [~~However, the effective date of~~] This subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon accessibility of training in all areas of the Commonwealth.

4. 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 substances 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.

(5) [~~(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 resulting in 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) Change in 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: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

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 and shall become effective July 1, 1994.

** 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) This subsection and subsection (4)(a) of this section shall not apply during normal school hours to a facility providing early childhood education to mixed-age groups of children ranging in age from two and one-half (2 1/2) to six (6) years that is accredited **or affiliated** by a nationally recognized educational association which has [~~accreditation~~] criteria for group size and child staff ratios contrary to this subsection.

(d) If the director's and employees' 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 that children have adequate supervision and that 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) hour[~~s~~] limit.

(b) At least one (1) staff member shall be assigned responsibility and provide adequate supervision 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 or aspirin 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 may [~~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, towels or washcloths, 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 for thirty (30) days. Substitutions shall be noted on the menu.

Section 3. Health and Sanitation. A facility required to have a food service permit shall be in compliance with 902 KAR 45:005, Food service code. 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 individ-

ual'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 **and shall be required to comply with subsections (1) and (2) of this section**.

(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, 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.

(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, bathrooms, 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. **Except after-school child care programs located on the premises of a public or a state-accredited nonpublic school and which serve only school-age children, shall not be required to have the outdoor playground area surrounded by a fence.** 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: August 2, 1993
FILED WITH LRC: August 6, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(As Amended)

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), **199.898(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 **provided by licensed facilities or certified family child care homes** [~~facilities~~].

Section 1. Discipline **Guidelines for** [~~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. **Facilities licensed pursuant to 905 KAR 2:090 and family child care homes certified pursuant to 905 KAR 2:100 shall:** [~~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.

Section 2. 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

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amended After Hearing)

401 KAR 65:010. Vehicle emission control programs.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 224.20-710 to 224.20-765, 57 FR 52987-53014, November 5, 1992, 40 CFR Part 51, Part 86, Subparts B, D, and N, Appendix B to Subpart S, U.S. EPA Technical Guidance, High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications, May 1993, 42 USC 7401 through 7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-735

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 the requirements for vehicle emission control programs in the Commonwealth.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given them in 401 KAR 65:001.

(1) "Antitampering and antimisfueling program" means an emission control program that provides for inspection of vehicles to detect removal or destruction of factory-installed emission control equipment or devices and use of improper fuels in vehicles.

(2) "Antitampering and antimisfueling inspection" means an inspection conducted pursuant to Section 6(2) of this administrative regulation to detect the presence of tampering and the use of leaded gasoline.

(3) "Automobile or truck" means a vehicle with at least four (4) wheels registered in the Commonwealth having a gross vehicle weight (GVW) of 18,000 pounds or less and licensed to operate upon the public highways for the purpose of transporting persons or property.

(4) "Basic vehicle inspection and maintenance program" or "basic program" means an emission control program implemented in a program area that requires vehicles subject to this administrative regulation to receive the annual testing required in Section 6(1) through (4) and (6) of this administrative regulation, as applicable, to demonstrate compliance with the standards of Section 5(1) and (3) of this administrative regulation.

(5) "Certificate of registration" or "registration" means the document issued by county clerks pursuant to KRS Chapter 186 indicating that the owner or operator has properly registered the vehicle, or a document issued for that purpose from another state, territory, or country.

(6) "Certification period" means the period for which a compliance or exemption certificate (other than a permanent exemption certificate issued pursuant to Section 4(1) of this administrative regulation) is valid.

(7) "Compliance certificate" is governed by the definition in KRS 224.20-710(1).

(8) "Contractor" means an independent contractor as governed by the definition in KRS 224.20-710(2).

(9) "Control system" is governed by the definition in KRS 224.20-710(3).

(10) "Dynamometer" means a device for measuring the horsepower of a motor vehicle engine.

(11) "Enhanced vehicle inspection and maintenance program" or "enhanced program" means an emission control program implemented in a program area that requires vehicles subject to this administrative regulation to receive the annual testing required in Section 6(1) through (6) of this administrative regulation, as applicable, to demonstrate compliance with the standards of Section 5(2) and (3) of this administrative regulation.

(12) "Evaporative emission control system" means an unvented fuel cap, motor vehicle fuel tank, vapor vent hoses, and evaporative canister.

(13) "Evaporative system integrity standard" means the minimum allowable level of pounds per square inch sustainable pressure for a given period of time, pursuant to Section 5(2)(b) of this administrative regulation.

(14) "Evaporative system purge standard" means the minimum allowable rate of gasoline vapor flow from the evaporative canister measured in liters per minute, pursuant to Section 5(2)(b) of this administrative regulation.

(15) "Exemption certificate" is governed by the definition in KRS 224.20-710(4).

(16) "Exhaust emission standard" or "emission standard" means:

(a) For all automobiles in a basic program area and for 1980 and older model year vehicles in an enhanced program area, the maximum allowable levels during a test of carbon monoxide, hydrocarbons, and the sum of carbon monoxide and carbon dioxide percentages appropriate for the age and type of vehicle tested, pursuant to Section 5(1)(a) and (2)(a)1 of this administrative regulation; and

(b) For 1981 and newer model year vehicles in an enhanced program area, the maximum allowable grams per mile of carbon monoxide, hydrocarbons, and oxides of nitrogen, for the applicable vehicle type, model year, and pollutant, pursuant to Section 5(2)(a)2 of this administrative regulation.

(17) "Fleet" means a group of vehicles owned, leased, or operated by a person who has the responsibility of obtaining registration for the vehicles.

(18) "Fleet operator" means the person who has the responsibility of obtaining registration for fleet vehicles.

(19) "Functional standard" means the evaporative system integrity standard (pressure standard) and the evaporative system purge standard.

(20) "Gross vehicle weight" or "GVW" means the combined manufacturer's weight of a vehicle and its maximum load to be carried.

(21) "Inspection station" is governed by the definition in KRS 224.20-710(5).

(22) "Measurable improvement" means **any improvement toward achieving the emission or functional standards** [~~a decrease in the emissions recorded during a retest~~] when compared to the measured **results** [~~emissions~~] obtained in the **initial** test.

(23) "Opacity" means the degree to which a motor vehicle's tailpipe exhaust gas plume obstructs the transmission of visible light, as measured by a full-flow, direct reading, continuous reading light extinction opacity meter, pursuant to Section 6(6) of this administrative regulation.

(24) "Opacity standard" means the maximum allowable opacity during an opacity test for the obstruction of visible light appropriate for a diesel vehicle, pursuant to Section 5(3) of this administrative regulation.

(25) "Operator" means a person who owns, leases, or operates a vehicle.

(26) "Owner" is governed by the definition in KRS 186.010(7).

(27) "Person" is governed by the definition in KRS 224.01-010(17).

(28) "Program area" means the county or the contiguous counties

which are designated nonattainment for ozone (except marginal) or carbon monoxide pursuant to 401 KAR 51:010, in which a vehicle inspection and maintenance program has been established, pursuant to Section 13 of this administrative regulation.

(29) "Retest" means any test performed after repair.

(30) "Tampering" means removing, **disconnecting** [~~reducing the effectiveness~~], or rendering inoperative or ineffective the catalytic converter, unvented fuel cap, air pump system, fuel inlet restrictor, exhaust gas recirculation (EGR) valve, positive crank case ventilation (PCV) system, or evaporative system, except to replace the device with a device which is equivalent in design and function to that which was originally installed on the vehicle and which has been approved by an independent, state, or federal laboratory recognized by the U.S. EPA.

(31) "Test equipment" means the analyzers and diagnostic equipment used to test a vehicle's compliance with the emission and functional standards of Section 5 of this administrative regulation, which are approved by the U. S. EPA pursuant to the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which is incorporated by reference in Section 14 of this administrative regulation.

(32) "Test" or "testing" means the use of test equipment and the application of techniques and methods, approved by the cabinet pursuant to Section 6 of this administrative regulation, to determine compliance with the allowable exhaust emission standards, the functional standards, and the antitampering and antimisfueling standards, pursuant to Section 5 of this administrative regulation.

(33) "Testing period" means the period of time during which a vehicle is scheduled to be tested to receive a compliance certificate or exemption certificate. This period consists of a three (3) month period that commences ninety (90) days prior to the expiration date of the vehicle's current certificate of registration. The cabinet shall publish notices of the testing periods pursuant to Section 3(2) of this administrative regulation. (34) "Transient exhaust emissions test" means the analysis of vehicle exhaust emissions during a series of accelerations and decelerations while a vehicle's power axle is mounted on a dynamometer with the vehicle's engine and transmission engaged, pursuant to the test procedures in Section 6(5) of this administrative regulation.

(35) "Vehicle" is governed by the definition in KRS 224.20-710(6).

(36) "Vehicle emission control program" is governed by the definition in KRS 224.20-710(7).

(37) "Vehicle identification number" or "VIN" means the number assigned to the vehicle by the vehicle's manufacturer.

(38) "Vehicle repair facility" means a repair facility which is open to the general public for the repair of automobiles or other vehicles, is legally licensed to be in business, has a published telephone number, and has a federal employer's identification number (FEID number) or Kentucky business tax number if there is no FEID number.

(39) "Vehicle inspection and repair form" means the form issued to the owner or operator of a vehicle when the vehicle is presented for inspection, pursuant to Section 9(2) of this administrative regulation.

Section 2. Applicability. (1) The owner or operator of a 1968 or newer model year vehicle shall not renew a certificate of registration for that vehicle in a county located in a program area unless a current certificate of compliance, issued pursuant to Section 9(1) of this administrative regulation, or a current exemption certificate issued pursuant to Section 4 of this administrative regulation, is presented to the county clerk. This administrative regulation shall apply to:

(a) Owners or operators, including fleet operators, of vehicles that are registered in a county that has been designated nonattainment for ozone (except marginal) or carbon monoxide, pursuant to 401 KAR 51:010; and

(b) Owners or operators of vehicles owned exclusively by a county; city; urban-county; board of education; emergency and ambulance vehicles operated by nonprofit corporations organized by the local, state, or federal government; and vehicles owned exclusively by a nonprofit volunteer fire department, volunteer fire prevention unit, or volunteer fire protection unit, when the vehicles are assigned to a person or office located in a program area.

(2) The provisions of this administrative regulation which relate to basic program requirements shall apply to the county or counties in which the cabinet has implemented a basic inspection and maintenance program.

(3) The provisions of this administrative regulation which relate to enhanced program requirements shall apply to the county or counties in which the cabinet has implemented an enhanced inspection and maintenance program.

(4) The provisions for tampering shall become applicable:

(a) On the date the vehicle emission control program commences testing vehicles in those program areas that had an antitampering and antimisfueling program in effect before January 31, 1991; and

(b) One (1) year from the date that a vehicle emission control program commences testing vehicles in other program areas.

(5) The contractor who enters an agreement with the cabinet to operate an emission inspection station shall be subject to the applicable requirements of this administrative regulation.

(6) Personnel of a permitted inspection station shall be subject to the requirements of Section 12 of this administrative regulation.

(7) Vehicles registered in a nonattainment county governed by a vehicle inspection and maintenance program implemented by a local air pollution control agency established pursuant to KRS Chapter 77 shall be exempt from this administrative regulation.

Section 3. Inspection Frequency and Notification. (1) Inspection frequency.

(a) Owners or operators of vehicles subject to this administrative regulation shall present their vehicles for testing annually at a permitted inspection station located in the program area.

(b) A vehicle shall not be tested to receive a compliance certificate pursuant to Section 9(1) of this administrative regulation, or shall not receive an exemption certificate pursuant to Section 4 of this administrative regulation, prior to the vehicle's testing period, except as provided in Section 4(2) and (3) of this administrative regulation.

(c) If a vehicle is inspected after the vehicle's testing period to receive a compliance or exemption certificate, the owner or operator shall pay the additional fee provided in Section 8(5) of this administrative regulation.

(d) The owner or operator shall pay the applicable fees, pursuant to Section 8 of this administrative regulation, when each vehicle is presented for testing. A compliance certificate, exemption certificate, or vehicle inspection and repair form shall not be issued until all applicable fees are paid, except as provided in paragraph (f) of this subsection.

(e) An owner or operator of a vehicle that has been issued an exemption certificate by the cabinet or contractor, shall be exempt from paragraph (a) of this subsection for the period of time indicated on the exemption certificate, pursuant to Section 4 of this administrative regulation.

(f) Federal, state and local agencies and public or private corporations with vehicles bearing official license plates, assigned to an office or individual in the program area, shall identify a contact person and shall submit, in writing, to the cabinet an initial listing of all assigned vehicles as of January 1 of each year. The listing shall be submitted to the contractor by January 31 of each year and shall include for each vehicle, at a minimum, the vehicle make, model year, VIN, license plate number, and a requested testing period. The contractor shall notify the contact person responsible for approval of changes to the requested testing period by February 15 of each year. The vehicles shall be subject to applicable emission and functional

standards and the antitampering and antimisfueling standard of Section 5 of this administrative regulation, to the applicable testing requirements of Section 6 of this administrative regulation, and to the fees provided in Section 8 of this administrative regulation. Fees shall be paid at the time of testing or in a schedule acceptable to the contractor and the cabinet.

(2) Notification.

(a) The cabinet shall notify owners of the testing period assigned to their vehicles by mailing a notice to each owner's address as listed with the Kentucky Transportation Cabinet and shall publish a legal notice or classified advertisement at least one (1) day each month in the newspaper with the largest circulation that is distributed daily in the program area.

(b) The mailed notice shall advise owners that, pursuant to KRS 224.20-720(2), the county clerk shall not renew a vehicle's certificate of registration without a compliance certificate or an exemption certificate issued by a permitted inspection station located in the program area, and shall notify owners that a vehicle shall be rejected from the inspection station if tampering has occurred.

(c) In addition to the information required in paragraph (c) of this subsection, the notice in the newspaper shall also advise the public of their obligation to have each vehicle tested prior to having the vehicle's certificate of registration renewed and shall specify the testing period for vehicles with certificates of registration due for renewal in the next three (3) months.

(d) Failure of the owner or operator to receive a notice shall not excuse the owner or operator from complying with this administrative regulation.

Section 4. Exemption Certificates. A person shall not issue or use an exemption certificate in violation of this administrative regulation. The following types of exemption certificates shall be issued by the contractor or the cabinet pursuant to the procedures in this section:

(1) Permanent exemption certificate.

(a) The owners or operators of vehicles equipped to operate exclusively on fuels other than gasoline or diesel fuel shall present the vehicle for inspection by the contractor during the initial testing period.

(b) If the cabinet confirms that the vehicle is not equipped to operate with gasoline or diesel fuel, a permanent exemption certificate shall be issued.

(c) The owner or operator of a vehicle, for which a permanent exemption certificate has been issued, shall not operate the vehicle if it is altered so that it may operate using gasoline or diesel fuel, without presenting the vehicle for testing at a permitted inspection station within thirty (30) days after the vehicle has been altered.

(2) Temporary exemption certificate.

(a) A temporary exemption certificate shall be issued by the cabinet if the owner or operator demonstrates and affirms to the cabinet, pursuant to subsection (4) of this section, that the vehicle will not be available for testing during the testing period. The owner or operator of a vehicle shall not seek a temporary exemption certificate to avoid testing which would otherwise be required.

(b) The owner or operator shall notify the cabinet when the vehicle will be available for testing and provide the VIN, proof of ownership, and the driver's license of the owner.

(c) The temporary exemption certificate shall expire thirty (30) days after the date the owner or operator indicates that the vehicle will be available for testing, except that the cabinet may extend the temporary exemption certificate upon further demonstration and affirmation by the owner or operator that the vehicle remains unavailable for testing. A temporary exemption certificate shall not be valid beyond the last day of the certification year in which it was issued.

(d) Prior to the expiration of a temporary exemption certificate, the owner or operator shall present the vehicle and the current temporary exemption certificate to a permitted vehicle inspection station when the vehicle is available for testing, and shall pay the test fee specified in Section 8(1) of this administrative regulation and the additional fee specified in Section 8(5) of this administrative regulation.

(e) The owner or operator shall obtain a compliance certificate or a repair cost exemption certificate, as applicable, before the temporary certificate expires. Failure of the owner or operator to obtain a compliance certificate or exemption certificate prior to the expiration of the temporary exemption certificate shall result in the cabinet's denial of another temporary exemption certificate and shall subject the owner or operator to penalties for failure to comply with KRS 224.20-710 to 224.20-765.

(3) Certification period exemptions.

(a) An exemption certificate shall be issued by the cabinet if the owner or operator demonstrates and affirms to the satisfaction of the cabinet, pursuant to subsection (4) of this section, that the vehicle will not be operated in the program area for more than thirty (30) days during a certification period.

(b) The owner or operator shall present to the cabinet the documentation demonstrating that the vehicle will not be operated in the program area, the VIN, proof of ownership, the driver's license number **or Social Security number** of the owner, and the location of the vehicle during the certification period. The owner or operator shall pay the exemption certificate fee specified in Section 8(1) of this administrative regulation.

(c) An exemption certificate shall be issued by the cabinet for a given certification period if the owner or operator demonstrates to the satisfaction of the cabinet that the vehicle has a valid compliance or exemption certificate issued by an equivalent emission control program approved by the U.S. EPA as part of a state implementation plan. The certificate shall be valid for the period that the certificate would have been valid if it had been issued pursuant to this administrative regulation. The owner or operator shall pay the exemption certificate fee specified in Section 8 of this administrative regulation.

(4) Acceptable proof for temporary and certification period exemptions.

(a) Requests for a temporary or certification period exemption shall be in the form of an affidavit signed by the owner or operator, stating the reason and the length of time the vehicle will be located out of the program area, or otherwise unavailable for testing, and shall include the address where the vehicle will be located during the period.

(b) Military personnel who are on active duty and who will be stationed 250 miles or more from a program area during a certification period may be granted an exemption if the cabinet receives a copy of the military orders or letter from their commanding officer or executive officer verifying that the assignment is 250 miles or more from the program area and that the assignment will continue during the period for which the exemption is requested.

(c) Owners or operators of vehicles subject to this administrative regulation who are registered as full-time students at a college, university, or other school, which is 250 miles or more from a program area, may be granted an exemption if the school's registrar verifies in writing the student's school address and the period of enrollment.

(d) Owners or operators of vehicles subject to this administrative regulation may request temporary or certification period exemption certificates by mail provided the owner or operator and vehicle meet the applicable requirements of this subsection. The request must be received no less than twenty (20) working days prior to the vehicle registration expiration date.

(5) Repair cost exemption certificates. The contractor may issue a repair cost exemption certificate, valid for the stated certification period, to the owner or operator of a vehicle subject to this administrative regulation if the following criteria have been met:

(a) The vehicle has achieved at least a measurable improvement in the amount of emissions for each pollutant or opacity standard for which the vehicle was failed, as measured from the first exhaust emission test; and

(b) The owner or operator of the vehicle which failed the retest has spent at least the following amounts for repairs on the applicable model year vehicle in attempting to have the vehicle pass a retest in the applicable program area:

1. For 1980 or older model years, the owner or operator has spent at least seventy-five (75) dollars;

2. For 1981 and newer model years, the owner or operator has spent at least $200;

3. For vehicles covered by 42 USC 7541(b), the owner or operator has spent at least $200[~~, including the manufacturer's or dealer's warranty~~].

4. In a basic or enhanced program area, the owner or operator of a diesel vehicle has spent at least seventy-five (75) dollars.

(c) The costs applied toward a cost exemption certificate shall be only for repairs based on appropriate diagnostics to correct problems related to an emission test failure, and shall not include costs to replace or repair components as a result of tampering. The cost of repairs to correct leaking, defective, or detached exhaust systems shall not be included in receiving a repair cost exemption certificate. [~~Costs for repairs that are covered under a manufacturer's or dealer's warranty shall be included in determining if a repair cost exemption certificate shall be issued.~~]

(d) Labor costs shall not be applied toward a cost exemption certificate for repairs performed on a vehicle by the owner or operator of that vehicle except as provided in Section 7(2)(f) of this administrative regulation.

(e) [~~(d)~~] An owner or operator may appeal the denial of a repair cost exemption certificate pursuant to the provisions of Section 11 of this administrative regulation.

Section 5. Standards of Performance for Vehicles. (1) Basic program area. The owner or operator of a vehicle subject to the requirements of a basic program area shall be issued a compliance certificate, pursuant to Section 9(1) of this administrative regulation, if the vehicle meets the applicable emission, functional, and antitampering and antimisfueling standards of this subsection and the applicable testing requirements of Section 6 of this administrative regulation.

(a) Exhaust emissions standard. The maximum allowable levels of carbon monoxide (CO) and hydrocarbons (HC), as measured by the idle exhaust emissions test, pursuant to Section 6(3) of this administrative regulation, for the applicable vehicle type, model year, pollutant, and gross vehicle weight (GVW) shall be as listed in the following table:

Vehicle Model Year	Vehicles Registered as Automobiles	* Vehicles having GVW of 6,000 lbs or less	Vehicles with GVW greater than 6,000 lbs but equal to 10,000 lbs or less	Vehicles with GVW greater than 10,000 lbs but equal to 18,000 lbs or less
	HC (ppm) CO (%)	HC (ppm) CO (%)	HC (ppm) CO (%)	HC (ppm) CO (%)
1968	950 8.5	1300 8.0	1500 9.0	1500 9.0
1969	900 8.5	1200 8.0	1100 8.0	1300 8.5
1970	850 8.4	1100 8.0	1100 8.0	1300 8.5
1971	850 8.1	1000 8.0	1000 8.0	1200 8.5
1972	800 8.0	1000 7.8	950 7.5	1000 7.0
1973	800 7.8	1000 7.8	950 7.5	1000 7.0
1974	800 7.6	950 7.8	950 7.5	1000 7.0
1975	700 7.5	900 7.0	950 7.5	1000 7.0
1976	700 6.5	700 7.0	900 7.5	1000 7.0
1977	650 6.3	700 7.0	850 7.5	900 6.5
1978	600 5.5	700 6.3	700 6.0	900 6.5
1979	600 4.5	450 5.5	650 5.5	900 6.5
1980	250 2.5	450 4.0	550 5.0	900 6.5
1981	220 1.2	350 1.7	450 4.0	500 3.5
1982	220 1.2	220 1.2	400 2.5	400 3.0
1983	220 1.2	220 1.2	350 2.0	400 3.0
1984	220 1.2	220 1.2	220 1.5	250 1.5
1985 & newer	220 1.2	220 1.2	220 1.2	250 1.5

* Other than vehicles registered as automobiles.

(b) Evaporative system integrity standard (pressure standard). For 1981 and newer model gasoline vehicles, the pressure standard for the evaporative emission control system shall be a minimum sustainable pressure of eight (8) inches of water for a maximum period of two (2) minutes, as measured by the evaporative system integrity test, pursuant to Section 6(4) of this administrative regulation.

(c) Antitampering and antimisfueling standard. Vehicles shall be inspected by inspection station or cabinet personnel for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation. A vehicle which shows evidence of tampering or misfueling shall be determined as not achieving this standard.

(2) Enhanced program area. The owner or operator of a vehicle subject to the requirements of an enhanced program area shall be issued a compliance certificate, pursuant to Section 9(1) of this administrative regulation, if the vehicle meets the emission, functional, and antitampering and antimisfueling standards of this subsection and the applicable testing requirements of Section 6 of this administrative regulation.

(a) Exhaust emissions standard.

1. For 1980 and older model year vehicles, the maximum allowable levels of carbon monoxide (CO) and hydrocarbons (HC), as measured by the idle exhaust emissions test, pursuant to Section 6(3)

of this administrative regulation, for the applicable vehicle type, model year, pollutant, and gross vehicle weight (GVW) shall be as listed in the table in subsection (1)(a) of this section.

2. For 1981 and newer model year vehicles, the maximum allowable grams per mile (gpm) of carbon monoxide, hydrocarbons, and oxides of nitrogen, as measured by the transient exhaust emissions test, pursuant to Section 6(5) of this administrative regulation, for the applicable vehicle type, model year, and pollutant shall be as listed in Section 85.2205(a) of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which is incorporated by reference in Section 14 of this administrative regulation.

(b) Evaporative system purge standard. For 1981 and newer model year vehicles, the purge standard for the evaporation emission control system shall be a minimum flow of one (1.0) standard liter at the conclusion of the transient exhaust emissions test, as measured by the test equipment, pursuant to Section 6(5)(a) of this administrative regulation.

(c) Evaporative system integrity standard (pressure standard). For 1981 and newer model gasoline vehicles, the pressure standard for the evaporative emission control system shall be a minimum sustainable pressure of eight (8) inches of water for a maximum period of two (2) minutes, as measured by the evaporative system integrity test, pursuant to Section 6(4) of this administrative regulation.

(d) Antitampering and Antimisfueling standard. Vehicles shall be inspected by inspection station or cabinet personnel for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation. A vehicle which shows evidence of tampering or misfueling shall be determined as not achieving the standard.

(3) Emission standard for diesel vehicles for basic and enhanced program areas. A diesel vehicle shall not emit visible emissions in excess of ten (10) percent opacity for ten (10) or more consecutive seconds, as measured by the test equipment pursuant to Section 6(6) of this administrative regulation, when tested at idle engine speed.

(4) Cause for rejection of vehicles. In a basic or an enhanced program area, a vehicle shall be rejected from the inspection station if:

(a) The inspection station or cabinet personnel are unable to determine readily that the vehicle presented at the inspection station is the vehicle identified in the VIN, certificate of registration, or license tag; or

(b) The vehicle, its contents, load, passengers, or operator causes, or has the appearance of causing, an unsafe condition at the inspection station. The test shall not be performed until the condition is corrected. The conditions for rejection shall include, but shall not be limited to, the following:

1. Leaking fuel;

2. The leaking of potentially toxic or hazardous materials, other than normal drive-train fluid;

3. Excessive noise;

4. Operator incapacity;

5. Operator or passenger misconduct;

6. The vehicle tire cords are visible;

7. The vehicle has a space-saver spare tire mounted on the drive axle;

8. The vehicle is pulling a detachable trailer or load;

9. The vehicle stalls repeatedly;

10. The vehicle has leaking, defective, or detached exhaust systems;

11. The vehicle has exhaust tailpipes altered from those of the original manufacturer of the vehicle so that proper access by the test equipment required in Section 6 of this administrative regulation is not possible; or

12. The inspection would cause inspection station personnel to be in an unsafe position, as determined by the contractor. Inspection station personnel shall document all rejections and the reasons for the rejection.

Section 6. Test Procedures for Vehicles. (1) Operator procedures for gasoline vehicles. The operator shall operate the vehicle for testing pursuant to the conditions specified in this section and at the direction of inspection station personnel as follows:

(a) Unless otherwise directed, the operator shall remain in the vehicle while the vehicle is in the test lane.

(b) During testing, the engine shall be at normal operating temperatures and shall not be overheating (as indicated by a gauge or warning light or boiling radiator), with all accessories turned off.

(c) Vehicles shall be approximately level during testing.

(d) If the engine stalls during testing, the test shall be restarted.

(2) Antitampering and antimisfueling inspection.

(a) The inspection station personnel shall perform an antitampering and antimisfueling inspection on all **1975** **[~~1980~~]** and newer model year vehicles presented to the inspection station for compliance with KRS 224.20-710 to 224.20-765. The procedure shall consist of a visual inspection for the presence of tampering and tail pipe lead deposits indicating the use of leaded fuel.

(b) **[~~(a)~~]** If tampering or misfueling is found, the owner or operator shall be so informed and shall be issued a vehicle emission repair form. **Tampered or misfueled vehicles shall not complete the applicable exhaust emission and function test procedures until the vehicle has been repaired.**

1. Missing or damaged components shall be repaired, regardless of expense. The cost of repair or replacement of these components is not subject to a repair cost exemption certificate provided in Section 4(5) of this administrative regulation.

2. Upon repair or replacement of tampered, inoperable, missing or malfunctioning components (except for an unvented fuel cap), the owner or operator shall present the vehicle for inspection and the completed vehicle inspection and repair form, signed by a mechanic of a vehicle repair facility, demonstrating that the components have been repaired or replaced and are in proper operating condition.

[~~(b) Tampered or misfueled vehicles shall complete the applicable exhaust emission and functional procedures of this section.~~]

(3) Idle exhaust emission test procedure for gasoline vehicles. The idle exhaust emissions test shall measure vehicle exhaust gas emissions for carbon monoxide (CO), carbon dioxide (CO_2), and hydrocarbons (HC) and shall be performed pursuant to 40 CFR 51, Subpart S, as promulgated in the Federal Register, of November 5, 1992 (57 FR 52987) which is incorporated by reference in Section 14 of this administrative regulation, and the following:

(a) Analyzers shall be warmed up, in stabilized operating condition, and adjusted according to manufacturer's specifications.

(b) If the vehicle is capable of being operated with gasoline or other fuels, the test shall be conducted using gasoline.

(c) Multiple exhaust vehicles shall be tested by sampling all exhaust points simultaneously or by other methods approved by the cabinet.

(d) Inspection station personnel shall attach the tachometer. With the engine operating at idle speed, the emergency brake on, and the transmission in "neutral" for vehicles with manual transmissions or "park" for vehicles with automatic transmissions, the sampling probe of the gas analytical system shall be inserted at least ten (10) inches into the tail pipe. If the probe cannot be inserted at least ten (10) inches, exhaust pipe extension boots shall be used.

(e) First chance to pass. The initial idle mode shall have a maximum duration of ninety (90) seconds and a minimum duration of thirty (30) seconds.

1. The analysis shall begin after an initial time delay of ten (10) seconds. If, within thirty (30) seconds the hydrocarbon reading is equal to or less than 100 parts per million and the carbon monoxide reading is five-tenths (0.5) percent or less, the vehicle shall pass the test. If these readings are not obtained within the first thirty (30) seconds, the test shall be continued for up to an additional sixty (60)

seconds. If at any time during the sixty (60) second period, the readings for both hydrocarbons and carbon monoxide meet the emission standards for the applicable vehicle model year and GVW, the vehicle shall pass the test.

2. If at any time during the test the carbon monoxide plus carbon dioxide concentration falls below six (6) percent, the test shall be voided.

(f) Second chance to pass. If the vehicle does not pass the procedure in paragraph (e) of this subsection, the test probe shall be removed, the test timer shall be reset to zero, and a second chance test shall be performed after using one (1) of the following preconditioning procedures:

1. The power axle of the vehicle shall be mounted on a dynamometer. The mode timer shall initiate when the dynamometer speed is within the limits specified for the vehicle engine size. The mode shall continue for a minimum of thirty (30) seconds. The dynamometer test schedule for engine preconditioning prior to a second-chance idle test shall be within the following limits:

Engine Size	Roll Speed	Normal Loading
4 or fewer cylinders	22 - 25 mph	2.8 - 4.1 brake horsepower
5 - 6 cylinders	29 - 32 mph	6.8 - 8.4 brake horsepower
7 or more cylinders	32 - 35 mph	8.4 - 10.8 brake horsepower

2. Full-time four (4) wheel drive vehicles shall be preconditioned with the engine speed at 2500 revolutions per minute (2500 rpm) plus or minus 300 revolutions per minute (±300 rpm) for thirty (30) seconds with the transmission in either "park" or "neutral."

3. Immediately following the preconditioning mode and when the vehicle's wheels are no longer moving, the mode timer shall be started and run for a period not to exceed ninety (90) seconds. The test probe shall be reinserted and the procedures described in paragraph (f) of this subsection shall be repeated.

4. If any pair of readings shows passing scores for both hydrocarbons and carbon monoxide, the vehicle shall pass the test. If all readings exceed the hydrocarbon limit or the carbon monoxide limit, or both, the vehicle shall fail the test. The operator shall be informed of the results, and the repairs recommended to correct the system deficiencies shall be included on the vehicle emission repair form.

(4) Evaporative system integrity test (pressure test).

(a) An evaporative system integrity test shall be performed on all 1981 and newer model gasoline powered vehicles presented for the purpose of compliance with this administrative regulation as follows:

(b) Inspection station personnel shall direct the operator of the motor vehicle to shut off the vehicle's engine. The operator shall allow inspection station personnel access to the motor vehicle engine compartment by releasing the hood latch or other method.

(c) Inspection station personnel shall disconnect all components and lines leading from the fuel tank at the junction of the evaporative canister. All lines and components, other than the main vent line, shall be sealed and made air tight. Vehicles with evaporative canisters that are inaccessible to inspection station or cabinet personnel, due to factory design of the vehicle, shall have the pressure test portion of this administrative regulation waived by the cabinet. A missing or damaged evaporative canister shall result in failure of the pressure test.

(d) The main vent line shall be pressurized to fourteen (14) inches of water, not to exceed twenty-six (26) inches of water system pressure, with commercial grade nitrogen. After the pressure is stabilized, the main vent line shall be sealed and the system pressure monitored for a maximum of two (2) minutes. An evaporative system that maintains a constant internal pressure equal to or greater than eight (8) inches of water for a duration of two (2) minutes shall be deemed acceptable.

(e) At the end of the two (2) minute monitoring period the unvented fuel cap shall be removed the monitoring equipment shall be observed for a decrease of internal pressure.

(f) Inspection station personnel shall:

1. Remove all monitoring equipment from the main vent line;

2. Remove all seals from all other components and lines disconnected from the evaporative canister; and

3. Reconnect the system in the configuration in which the vehicle was presented for inspection.

(g) Upon successful completion of paragraphs (d) and (e) of this subsection, the vehicle shall pass the test.

(h) If any of the following occurs, the vehicle shall fail the test. The operator shall be informed of the results, and the repairs recommended to correct the system deficiencies shall be included on the vehicle emission repair form.

1. An internal system pressure of fourteen (14) inches of water is not obtained;

2. The internal system pressure drops below eight (8) inches of water at any time during the two (2) minute monitoring period; or

3. Upon removal of the unvented fuel cap, a decrease in internal pressure is not observed.

(i) The cost of repairs performed on the evaporative emission control system, that are not a result of tampering, may be applied to a repair cost exemption certificate, pursuant to Section 4(5) of this administrative regulation.

(5) Transient exhaust emissions test and evaporative emission purge test of gasoline vehicles. The transient exhaust emissions test and evaporative emission purge test shall be performed pursuant to the procedures prescribed in Sections 85.2205 and 85.2221 of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, and the following: (The U.S. EPA Technical Guidance is incorporated by reference in Section 14 of this administrative regulation.)

(a) Evaporative emission purge test. Inspection station personnel shall direct the operator of the motor vehicle to shut off the vehicle's engine. The operator shall allow inspection station personnel access to the motor vehicle engine compartment by releasing the hood latch or other method.

1. Inspection station personnel shall connect a flow measurement device where the purge line intersects with the canister. The flow measurement device shall measure the flow of gasoline vapor (in standard liters) during the transient exhaust emissions test procedure.

2. A vehicle shall fail the evaporative emission purge procedure if the flow of gasoline vapor is less than one (1) liter at the completion of the transient exhaust emissions test.

3. Vehicles with evaporative canisters that are inaccessible to inspection station or cabinet personnel, due to factory design of the vehicle, shall have the evaporative emission purge test portion of this administrative regulation waived by the cabinet. A missing or damaged evaporative canister shall result in failure of the purge test.

(b) Transient exhaust emissions test. The operator of the vehicle shall surrender control of the vehicle to inspection station or cabinet personnel to conduct the transient exhaust emissions test procedure.

1. The vehicle engine shall be restarted and the power axle of the vehicle shall be mounted on a dynamometer. The dynamometer rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer.

2. Restraining devices shall be applied to the vehicle to minimize lateral and forward movement of the vehicle.

3. An external engine cooling fan shall be positioned to direct air to the vehicle cooling system.

4. The exhaust collection system shall be positioned to ensure capture of the entire exhaust stream from the tailpipe during the transient driving cycle.

5. The dynamometer power absorption and inertia weight settings shall be selected from the U.S. EPA-supplied table based upon the vehicle type and number of cylinders or cubic inch displacement of the engine. Vehicles not listed in the table shall be tested using the

default power absorption and inertia settings provided in the table in Section 85.2221(5) of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which has been incorporated by reference in Section 14 of this administrative regulation.

6. Transient driving cycle. The vehicle shall be driven over the cycle specified in the table in Section 85.2221(e)(1), of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which has been incorporated by reference in Section 14 of this administrative regulation.

7. Inspection station or cabinet personnel shall follow a trace (an electronic, visual depiction) of the time/speed relationship of the transient driving cycle. The trace shall be of sufficient magnification and detail to allow accurate tracking and anticipate upcoming speed changes. The trace shall also clearly indicate gear shifts as specified in subparagraph 8 of this paragraph.

8. Shift schedule for manual transmissions. Inspection station or cabinet personnel shall shift gears of vehicles according to the schedule in Section 85.2221(e)(3) of the U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993, which has been incorporated by reference in Section 14 of this administrative regulation. Gear shifts shall occur at the points in the driving cycle where the specified speeds are obtained except for the shift at 119.0 seconds, which shall occur at the specified time.

9. Inspection station or cabinet personnel shall idle the vehicle for ten (10) seconds as the exhaust analysis equipment samples the ambient air.

10. The lane control computer shall signal the inspection station personnel to initiate the driving cycle. The drive cycle shall have a duration of approximately four (4) minutes.

11. The test equipment shall collect samples of the mass of each pollutant for each second of the following sampling mode and phase schedules:

a. Composite Analysis Schedule

MODE	CYCLE PORTION
1	0 to 60 seconds
2	61 to 119 seconds
3	120 to 174 seconds
4	175 to 239 seconds; and

b. Second-by-second mass analysis schedule

PHASE	CYCLE PORTION
1	0 to 93 seconds
2	94 to 239 seconds

12. If at the completion of the driving cycle, the composite emission analysis in subparagraph 1 of this paragraph exceeds the enhanced emission standards for a pollutant in Section 5(2) of this administrative regulation, the second-by-second emission analysis results of Phase 2 in subparagraph 11b of this paragraph shall be compared to those standards. If the composite emission level for a pollutant is below the enhanced emission standard in Section 5(2) of this administrative regulation, or if the Phase 2 emission level is below the enhanced emission standard, the vehicle shall pass the test for that pollutant.

(c) The owner or operator of a vehicle that fails to meet the emission standard, pursuant to Section 5(2)(a) of this administrative regulation, for any specified pollutant or the evaporate emission purge standard, pursuant to Section 5(2)(c) of this administrative regulation, shall be so informed and the repairs recommended to correct the deficiency shall be included on the vehicle inspection and repair form.

(d) Equivalent methods which have been approved by the cabinet and the U.S. EPA for the Transient Exhaust Emissions Test and Evaporative Emission Purge Test of Gasoline Vehicles may be substituted for the procedures prescribed in this section.

(6) Test procedures for diesel vehicles. The operator of a diesel vehicle shall allow the vehicle to be operated for testing pursuant to the conditions specified Section 6(1) of this administrative regulation and the following:

(a) Diesel-powered vehicles shall be inspected with an opacity meter that is a full-flow, direct reading, continuous reading light extinction type using a collimated light source and photo-electric cell, accurate to within plus or minus five (5) percent.

(b) Separate measurements shall be made on each exhaust outlet on diesel vehicles equipped with multiple exhaust outlets. The reading taken from the outlet giving the highest reading shall be used for comparison with the standard for the vehicle being tested.

(c) A diesel vehicle shall meet the opacity standard specified in Section 5(3) of this administrative regulation to pass the test. If the vehicle fails the test, the operator shall be so informed and the repairs required to correct the deficiency shall be included on the vehicle inspection and repair form.

Section 7. Testing of Fleet Vehicles. (1) The owner or operator of a fleet operating a fleet inspection station to test vehicles that are in that fleet shall comply with this section.

(a) A fleet inspection station shall not be operated without a fleet inspection permit issued by the cabinet.

1. The fleet owner or operator shall submit a complete application for a permit to the cabinet, using Form DEP-V001, Permit Application to Operate a Fleet Vehicle Inspection Station, which has been incorporated by reference in Section 14 of this administrative regulation.

2. The permit shall be valid for one (1) year and may be renewed by the cabinet. For renewal of the permit, the fleet operator shall submit to the cabinet an updated fleet inspection station application form at least forty-five (45), but no more than sixty (60) days, prior to the permit's expiration.

3. The fee for a fleet inspection station permit or permit renewal shall be $200, pursuant to Section 8(6)(d) of this administrative regulation.

(2) The fleet operator shall:

(a) Submit to the cabinet a schedule for the testing of the fleet vehicles and payment of the inspection fees, pursuant to Section 8(7)(a) through (c) of this administrative regulation;

(b) Test the vehicles in the fleet according to the schedule in the fleet inspection permit. The schedule shall contain the following information:

1. The number of vehicles to be tested;
2. The VINs of the vehicles to be tested;
3. The months the vehicles will be tested; and
4. The operating hours and location of the fleet inspection station;

(c) Use the forms and compliance certificates issued by the cabinet;

(d) Issue exemption certificates pursuant to Section 4 of this administrative regulation;

(e) Use test equipment and procedures approved by the cabinet pursuant to Sections 5 and 6 of this administrative regulation and assure that the test equipment provides a recordkeeping mechanism to record the results of all tests;

(f) Maintain records of all operations associated with the testing of the fleet vehicles, including but not limited to the repairs to fleet vehicles that failed the test;

(g) Make available to the cabinet and the contractor the results of the tests performed by the fleet inspection station;

(h) Provide a procedure for integrating the results of the tests performed by the fleet operator into the recordkeeping system of the

contractor who operates the vehicle emission control program in the program area where the fleet is located;

(i) Perform the daily and hourly quality assurance procedures that are prescribed in the contract between the cabinet and the contractor, each day the analyzers are in operation, and allow the cabinet or the contractor to perform the other quality assurance activities as prescribed in the contract; and

(j) Maintain an in-house program for the maintenance of vehicles.

(3) A fleet operator may enter into an agreement with the contractor who holds the contract for testing vehicles within the program area where the fleet is located, for testing the fleet vehicles by the contractor outside public testing hours or at mobile inspection stations. The agreement shall not be implemented unless it has been approved by the cabinet.

Section 8. Fees. (1) The fee for testing a vehicle shall be based upon the contract that is awarded and the cabinet's costs of implementing the vehicle emission control program in the program area, unless other fees are also applicable. The fee shall be paid each year that an owner or operator is required to obtain a compliance or exemption certificate.

(2) Unless the vehicle is tested at a fleet inspection station or pursuant to an agreement with the contractor, the fee shall be collected before the testing commences or before an exemption certificate is issued. If the vehicle fails the first test, the first retest shall be provided at no cost if the appropriate vehicle inspection and repair form is satisfactorily completed and returned. Each test performed in addition to the first test and first retest shall be subject to the additional fee specified in subsection (5) of this section. The owner or operator shall submit the properly completed vehicle inspection and repair form for the last failed test at the time of the new test.

(3) The fee for having a vehicle tested before or after its testing period shall be five (5) dollars.

(4) The fee for the issuance of a duplicate compliance certificate or exemption certificate, pursuant to Section 10 of this administrative regulation, shall be five (5) dollars.

(5) The fee for issuing an exemption certificate shall be equal to the cost of the test. A fee shall not be charged for the issuance of a permanent exemption certificate.

(6) The additional fee for the issuance of a compliance certificate or exemption certificate, the year after a temporary exemption certificate was issued to an owner or operator, who did not present the vehicle for testing prior to the expiration of the temporary exemption certificate, shall be twenty-five (25) dollars.

(7) Fees for testing fleet vehicles.

(a) The fee for a compliance or exemption certificate for a fleet vehicle which is tested at a fleet inspection station shall be no less than the fee established by the contract between the cabinet and the contractor.

(b) The fee for a compliance or exemption certificate for a fleet vehicle which is tested by the contractor under an agreement implemented pursuant to subsection (3) of this section, shall be no less than the fee established by the contract between the cabinet and the contractor. The contractor may charge an additional fee which shall not exceed the contractor's additional cost of testing the fleet.

(c) The fees for compliance or exemption certificates issued to fleet vehicles may be paid on a weekly or monthly basis, or as otherwise approved by the cabinet or agreed to by the contractor and the fleet operator, as applicable.

(d) The fee for renewal of a fleet inspection station shall be $200.

Section 9. Forms and Certificates. The contractor shall use only forms, compliance certificates, and other materials that are approved by the cabinet. The following documents may be issued to the owner or operator according to this administrative regulation.

(1) Compliance certificate. The operator of each vehicle which meets the applicable emission, functional, and antitampering and antimisfueling standards specified in Section 5 of this administrative regulation, complies with the testing requirements of Section 6 of this administrative regulation, and has paid the applicable fee specified in Section 8 of this administrative regulation shall be issued a compliance certificate. [~~Compliance or repair cost exemption certificates issued by the contractor for fleet vehicles, or issued pursuant to a test by a mobile station, shall be issued within one (1) month of the vehicle's being eligible for the certificate, and after payment of the certification fee pursuant to Section 8 of this administrative regulation.~~] The compliance certificate shall contain at least the following information:

(a) Inspection station identification;

(b) Date and time of test;

(c) Identification number of the inspector;

(d) Vehicle license number;

(e) VIN, vehicle model year, and vehicle make;

(f) Applicable emission standards;

(g) Emission test results (hydrocarbon, carbon monoxide, sum of carbon monoxide and carbon dioxide percentage, and if applicable, oxides of nitrogen);

(h) Applicable pressure standards;

(i) Evaporative integrity test results (minimum sustained pressure);

(j) Applicable evaporative system purge standards;

(k) Evaporative system purge test results (minimum flow);

(l) Whether the test results are from the first test, first retest, or subsequent retest; and

(m) A unique, encoded test identification number.

(2) Vehicle inspection and repair forms.

(a) A vehicle inspection and repair form shall be issued to the operator of each vehicle which fails a test. The contractor shall indicate the recommended repairs to be performed. The vehicle inspection and repair form is incorporated by reference in Section 14 of this administrative regulation. The form shall be completed and returned to the inspection station personnel at the time of the retest. The owner shall indicate the following items on the vehicle inspection and repair form with supporting documentation:

1. Proof that repairs were performed and repair costs were incurred which were reasonable. Repairs made earlier than thirty (30) days prior to the first test failure for the current testing period shall not be included; and

2. A list of the repairs in sufficient detail for the contractor to determine that the repairs are related to the type of failure shown on the vehicle inspection and repair form.

(b) The person performing repairs on a vehicle shall indicate on the repair form the repairs performed and the itemized costs. The person shall affirm that all the repairs, checks, and adjustments were properly performed in accordance with requirements on the form by signing and printing his name and the date of repairs on the vehicle inspection and repair form. If the repairs were performed by a mechanic at a vehicle repair facility, the repair facility's name, federal employer's identification number (FEID number), or Kentucky business tax number if there is no FEID number, repair date, and business telephone number shall be included on the vehicle inspection and repair form. In the appeals process, if the cabinet determines that the work claimed to have been completed was not done or was not in accordance with stipulations on the vehicle inspection and repair form, the cabinet may withhold issuance of a repair cost exemption certificate, and the owner or operator may be subject to penalties under KRS 224.20-765.

Section 10. Duplicate Certificates. The cabinet may issue a duplicate compliance, exemption, temporary exemption, or repair cost exemption certificate if the original certificate is lost. The owner shall notify the cabinet as soon as possible after the loss is noticed. The fee for a duplicate certificate shall be as prescribed in Section 8(4) of this administrative regulation.

Section 11. Appeals. (1) An owner or operator may appeal the denial of a repair cost exemption certificate if the following conditions have been met:

(a) The owner or operator has spent at least the amount specified in Section 4(5)(b) of this administrative regulation and no measurable improvement in emissions was achieved; or

(b) The owner or operator has spent less than the amount specified in Section 4(5)(b) of this administrative regulation and a mechanic employed at a repair facility affirms that no additional repairs can be performed that would improve the vehicle's emissions or that additional repairs would result in a total repair cost greater than the amount specified in Section 4(5)(b) of this administrative regulation for the vehicle age.

(2) The owner or operator shall present the vehicle to the cabinet and the vehicle shall undergo a comprehensive diagnostics check by the cabinet. Vehicles shall also be subject to an inspection for tampering and misfueling, pursuant to Section 6(2) of this administrative regulation.

(3) The cabinet may require that other repairs in this subsection be performed, if the diagnostics check in subsection (2) of this section verifies that the repairs are necessary and may result in an improvement in the vehicle's emissions. Repairs that the cabinet may require include, but are not limited to: replace the air filter; replace the positive crankcase ventilation valve; replace the evaporative canister; replace the NO_x sensor; adjust the air-to-fuel mixture; adjust the idle speed; adjust or repair the choke; repair float, power valves, needles, seats, and jets; repair vacuum hoses; replace spark plugs; replace plug wires; replace distributor, rotor cap, or points; adjust dwell or timing; replace oxygen sensor; or repair or replace the exhaust gas recirculation valve, carburetor, fuel injector, catalytic converter, electronic control module computer, or secondary air system, if the repair or replacement is covered under a manufacturer's or dealer warranty. The cabinet may issue a repair cost exemption certificate to vehicles that comply with this section if all the required repairs have been performed and the vehicle does not meet the emission and functional standards in Section 5 of this administrative regulation.

(4) Requests for an appeal of a denial of a cost repair waiver shall be made in writing and delivered to the contractor's inspection station manager or other contractor designee who shall promptly forward the request to the cabinet and a cabinet test date shall be scheduled and performed.

Section 12. Inspection Station Personnel Requirements. (1) All inspection station personnel shall successfully complete a training course approved by the cabinet. The training course shall include at least the following components:

(a) Causes and affects of air pollution;

(b) The purposes, functions, and goals of the vehicle emission inspection program;

(c) KRS 224.20-710 to 224.20-765 and this administrative regulation;

(d) Technical details of the test procedures and the rationale for their design;

(e) Emission control device function, configuration, and inspection;

(f) Test equipment operation, calibration, and maintenance;

(g) Quality control procedures and their purpose;

(h) Methods of providing courteous, fair, and efficient service to the public; and

(i) Safety and health issues related to the inspection process.

(2) Successful completion of the training course shall be determined by a written examination with a score of eighty (80) percent or more and successful performance of a complete unassisted vehicle inspection demonstrating proper procedures.

(3) The cabinet shall certify all contractor personnel that successfully complete the requirements of subsection (2) of this section. The certification shall expire two (2) years from the date of issuance. Contractor personnel whose certifications have expired are prohibited from inspecting vehicles until they complete the training requirements in this section and are recertified.

(4) Inspection station personnel shall wear identification tags visible to the public.

(5) Neither the contractor nor any employee of the contractor shall engage in the business of manufacturing, selling, maintaining, or repairing vehicles. The contractor may maintain or repair his own vehicles.

Section 13. Vehicle Emission Control Program Areas, Established. (1) The cabinet shall establish a basic vehicle emission control program in counties in which the entire county has been designated moderate ozone nonattainment in 401 KAR 51:010.

(2) The cabinet shall establish an enhanced vehicle emission control program in counties in which the entire county has been designated a serious, severe, or an extreme ozone nonattainment area and in counties in which the entire county was designated an urban ozone nonattainment area prior to the Clean Air Act Amendments of 1990.

(3) The vehicle emission control programs established pursuant to this administrative regulation shall continue upon redesignation of the program areas to attainment for ozone in 401 KAR 51:010.

Section 14. Incorporation by Reference. (1) The following forms required for vehicle emission control programs are hereby incorporated by reference:

(a) Form DEP V001, Permit Application to Operate a Fleet Vehicle Inspection Station, July 15, 1993; and

(b) Form DEP-V002, Vehicle Inspection and Repair Form.

(2) The following guidance documents which contain test methods and equipment specifications to be used by the contractor are hereby incorporated by reference:

(a) U.S. EPA Technical Guidance, "High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications", May 1993;

(b) 40 CFR 51, Subpart S, as promulgated in the "Federal Register" of November 5, 1992, (57 FR 52987).

(3) Copies of the materials incorporated by reference 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, Suite 1, 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
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: September 14, 1993
FILED WITH LRC: September 14, 1993 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 1993

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:335. Employee actions.

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

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

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

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

(2) Voluntary demotion.

(a) A voluntary demotion shall be made only if an employee with status requests a voluntary demotion on a written form prescribed by the Department of Personnel.

(b) The form shall include:

1. A statement of the reason for the request;
2. The effective date of the demotion;
3. The position from which he requests demotion;
4. The position to which he will be demoted;
5. A statement that the employee waives his right to appeal the demotion.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel.

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

Section 3. Transfers. (1) An employee with status may be transferred pursuant to the provisions of this administrative regulation.

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

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

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

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

(b) The notice shall state the:

1. Employee has been selected for transfer;
2. New work station;
3. Reason for the transfer;
4. Employee is required to report to the new work station;
5. Effective date of the transfer; and
6. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

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

(d) An employee shall report to the new work station upon the date specified in the notice.

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

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

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

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and
2. A statement that the employee is entitled to:

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

b. Moving expenses, if any.

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

(6) Voluntary transfer.

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

(b) The form shall include:

1. A statement of the reason for the request;
2. The effective date of the transfer;
3. The position, including identifying number, from which he requests a transfer;
4. The position, including identifying number, to which he requests a transfer; and
5. A statement that the employee waives his right to appeal the transfer.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel.

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

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

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

(b) Approved by the Commissioner of Personnel.

(2) Approval shall include a finding that:

(a) The candidate for reinstatement meets the current qualifications for the job classification to which he is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If the reinstatement is to a classification outside of the classification series where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.

(4) For the purposes of this administrative regulation, "class series" means "a group of positions similar as to duties performed but with varying levels of discretion and responsibility, minimum requirements of training, experience, or skill, with schedules of compensation commensurate with minimum requirements." ~~[If a request is for reinstatement to the candidate's former job classification, it shall be approved if the candidate meets the current qualifications for the former job classification.~~

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

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

~~(b) Candidate has not previously had status in the job classification.]~~

TERRI KING SCHOBORG, Chairwoman
APPROVED BY AGENCY: September 10, 1993
FILED WITH LRC: September 15, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on October 26, 1993 at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, (502) 564-7830.

REGULATORY IMPACT ANALYSIS

Agency Contact: R. Hanson Williams
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This regulation must apply to all classified employees and all state agencies with classified employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR Part 900, Subpart F, Sections 900.601-900.606 (48 FR 9209, March 4, 1983).

2. State compliance standards. The purpose of this regulation is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognize fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:130. Hazardous duty coverage.

RELATES TO: KRS 61.592, 78.530, 78.545(31)
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statute allows agencies participating in the Kentucky Retirement Systems to request hazardous position coverage for employees. This administrative regulation sets out the procedures and forms for requesting hazardous position coverage.

Section 1. If a county [~~an agency~~] eligible to participate in the County Employees Retirement System chooses to provide hazardous duty coverage to all eligible employees, the county [~~agency~~] shall adopt an appropriate order to pay the required contributions and provide hazardous coverage to all eligible employees. Notwithstanding the three (3) month trial period set out in Section 2 of 105 KAR 1:120, the county's request for participation in CERS shall be submitted to the Board of Trustees at the first quarterly meeting which occurs at least one (1) month after the adoption of the appropriate order. The effective date of hazardous position coverage in the order shall be the date of the county's participation in County Employees Retirement System [~~first day of any month following the date of the~~

~~quarterly meeting of the Board of Trustees which occurs after adoption of the appropriate order~~].

Section 2. A county participating in the County Employees Retirement System or a [~~An agency or~~] department participating in the Kentucky Employees Retirement System may provide hazardous position coverage upon authorization by the [~~cabinet secretary or~~] governing authority [~~board~~]. The governing authority [~~cabinet secretary or board chairman~~] shall make the request for hazardous position coverage in writing. The effective date of hazardous position coverage shall be the first day of any month following the quarterly meeting of the Board of Trustees which occurs after the date of the request.

Section 3. The county [~~agency~~] or department shall complete and submit the Form HP-1, dated July 1991, incorporated by reference. The form shall be signed by the head of the county [~~agency~~] or department and by an individual who can attest that sufficient funds have been budgeted for the employer contributions.

Section 4. The county [~~agency~~] or department shall submit a description of the duties of each position for which hazardous coverage is requested.

Section 5. The county [~~agency~~] or department shall complete and submit a Form HP-2, dated July 1991 provided by the retirement system for each employee in a position for which the coverage has been requested.

Section 6. If the county [~~agency~~] elects, pursuant to KRS 78.530(3)(a), (d) or (f), to pay the cost of providing hazardous coverage for current employees for past service in positions approved for hazardous coverage, the county [~~agency~~] shall request and pay for an actuarial study to determine the cost.

Section 7. The forms required by this administrative regulation are incorporated by reference and are available from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED: August 19, 1993

FILED WITH LRC: September 10, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1993, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: This proposed amendment affects those agencies which apply for hazardous duty coverage under KRS 61.592.

(a) Direct and indirect costs or savings to those affected: No cost is associated with this administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No increase in paperwork.

(2) Effects on the promulgating administrative body: No cost is associated with the administrative regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No increase in paperwork.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation has no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This proposed amendment specifies the treatment of an agency which elects to participate in the County Employees Retirement System and to request hazardous duty coverage at the same time.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The hazardous duty coverage requests were required to be considered at the next scheduled meeting of the board with coverage effective following approval. 105 KAR 1:120 required a three month trial reporting period before review by the board.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This amendment eliminates the conflict with 105 KAR 1:120 with regard to consideration by the board and effective date of hazardous duty coverage. The elimination of this conflict will prevent individual local government employees from having to make an additional payment to the retirement system to receive hazardous credit for the initial months of employment.

(6) Any additional information or comments: This proposed amendment is in conformance with the policy and accepted procedure of the board.

TIERING: Is tiering applied? Yes. This proposed amendment allows hazardous duty employees to receive coverage upon initial participation date instead of being treated as nonhazardous until a subsequent meeting of the board.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to the participation of local government entities in the County Employees Retirement System under the hazardous duty provisions of KRS 61.592.

(3) State the aspect or service of local government to which this administrative regulation relates. This proposed amendment establishes the effective date of hazardous duty coverage when the agency files for hazardous coverage upon initial participation.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):
Other Explanation: This proposed amendment does not impact the revenues or expenditures of local government.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 344.030, 29 CFR Part 1630, 42 USC 12111(9)
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statutes provide for disability benefits to members of the retirement systems and for a process of appealing a denial of disability benefits. This administrative regulation describes those procedures.

Section 1. (1) Application for disability benefits shall be made on the Notification of Retirement, Form 6, dated January 1991.
(2) For members in nonhazardous positions, the application shall be received in the retirement office within 365 calendar days of the employee's last day of paid employment in a regular full-time position. The period shall begin on the day after the last day of paid employment and shall end at close of business on the 365th day following. If the last day of the period is a Saturday, Sunday or holiday, then the application shall be valid if received in the retirement office by the close of the next business day following the weekend or holiday. The employer shall certify the last day of paid employment. The application may be submitted prior to the member's last day of paid employment.
(3) For members in hazardous positions, application shall be received prior to the member's date of termination of employment.

Section 2. If the member is eligible to begin drawing early retirement benefits, the member shall be notified of his right to a retirement allowance while his disability application is being processed. Election of early retirement by the member shall not affect his application for disability retirement.

Section 3. If the member is not in a hazardous position, an Employee's Job Description, dated August 1993 [~~1992~~], shall be completed by the member and [~~by his employer and~~] submitted to the retirement office. The employer shall complete an Employer's Job Description, dated August 1993, and submit it to the retirement office. The descriptions shall be on the form provided by the retirement office. The retirement office may require additional details from the member and the employer on the member's job duties.

Section 4. The retirement office shall request the medical records of the member from the physicians or medical facilities named on the application. The member's physicians or medical facilities shall submit copies of all medical records, test results or other information applicable to the member to the retirement office. The member or his physicians may submit a current listing of the member's prescription medications. Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results. The retirement office shall pay a reasonable fee for the copies. Amounts above that paid by the retirement office for the copies shall be the responsibility of the member.

Section 5. The member shall provide to the retirement system information concerning his status with regard to Workers' Compensation and Social Security disability benefits.

Section 6. When both of the job descriptions and all medical information from at least two (2) physicians or medical facilities that have treated or examined the member have been received, the information shall be submitted to the medical examiner.

Section 7. The medical examiner shall base his determination on the medical evidence contained in the member's retirement file. The medical examiner may contact the member or the member's physicians to request additional medical evidence.

Section 8. The time limits in KRS 61.665 for the member's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the member from the retirement office and shall continue until close of business on the date the member files the necessary action with the retirement office or the date the time period ends. The period shall toll until the member is in receipt of written notice from the retirement office of further denial. The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g). When the periods allowed under the statute have been exhausted, the member shall have no further right to appeal to the hearing officer.

Section 9. The member shall make a request for a formal hearing in writing. If the member is unable to attend or desires to reschedule a formal hearing, the member shall send the retirement office a request in writing prior to the date of the hearing, and the hearing officer may reschedule the hearing upon a finding of good cause.

Section 10. The hearing officer may allow the member to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the member. The hearing officer shall only consider competent medical evidence within or attached to the determination and shall not consider any vocational factors.

Section 11. The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the member's retirement file.

Section 12. All parties shall have fourteen (14) calendar days to submit written exceptions to the hearing officer's findings and conclusions to the retirement office, beginning on the day following receipt of the hearing officer's recommended order.

Section 13. (1) If the member's application for disability is approved, the member's disability benefit shall be paid retroactive to the month following the month of the member's last day of paid employment.
(2) If the member did not receive early retirement benefits, upon the member's selection of a payment option, the retirement office shall pay the member the total monthly retirement allowances owed.
(3) If the member received early retirement benefits, the retirement office shall calculate and pay to the member the difference between the early retirement benefit which was paid to the member and the disability benefit. The member shall not change his payment option.
(4) Any increases provided to recipients under KRS 61.691 shall be applied to the member's disability benefit in determining the total retroactive payment owed to the member.

Section 14. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Chairman

APPROVED: August 19, 1993

FILED WITH LRC: September 10, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1993, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: Applicants for nonhazardous disability benefits are affected.

(a) Direct and indirect costs or savings to those affected: There is no cost to those affected.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The job description forms for the applicant and applicant's employer have been made separate. The form completed by the applicant's employer has requested specific information concerning the employer's attempts to make reasonable accommodations under KRS 344.030.

(2) Effects on the promulgating administrative body: There is no increase in the number of forms set or processed. Thus, there is no increase in cost.

(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: The regulation does not increase paperwork.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation does require additional documentation from the agency with regard to reasonable accommodations.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The information on reasonable accommodations is necessary to determine the extent of the member's incapacity to perform his job or jobs of like duties.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. This proposed amendment relates to reasonable accommodation efforts required of all employers.

FISCAL NOTE ON LOCAL GOVERNMENT

(1) Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

(2) State what unit, part or division of local government this administrative regulation will affect. The proposed amendment requires additional paperwork reporting from local government personnel offices for employees applying for disability retirement through the County Employees Retirement System.

(3) State the aspect or service of local government to which this administrative regulation relates. The additional paperwork requirement relates to the Americans with Disabilities Act, specifically 42 USC 12111(9), governing reasonable accommodations. Employers will be asked on the job description form if reasonable accommodations have been attempted and if so, the nature of the accommodations. This information will be considered by the medical examiner in the determination of the extent of the applicant's disability.

(4) Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The employer currently is required to complete the job description form. The additional information requested is required under ADA.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:270. Special federal income tax withholding.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: This administrative regulation is necessary to comply with the provisions of PL 102-318 regarding direct rollovers of taxable distributions and the withholding of federal income tax. This administrative regulation establishes the procedure for informing affected members of their rights with regard to federal taxation rules and provides forms for members to indicate their preference for federal tax withholding or direct rollover of funds. This administrative regulation also establishes a procedure to issue a check to an alternate payee of a qualified domestic relations order if the alternate payee does not return the form required for federal income tax purposes within a reasonable time.

Section 1. (1) Upon receipt of a request for refund of member contributions from the member or beneficiary who is the spouse, the retirement office shall mail the Form 27, Direct Rollover/Direct Payment Election Form for Refund of Member Contributions, dated August 1993 [~~December 1992~~], along with a copy of the Special Tax Notice Regarding Plan Payments, dated December 1992, to the individual requesting payment.

(2) The member or beneficiary who is the spouse shall complete the Form 27 and return it to the retirement office. If the member or beneficiary intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the member or beneficiary shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The refund of contributions shall not be processed until the completed Form 27 is returned by the member or beneficiary to the retirement office.

Section 2. (1) Upon receipt of the Form 6A on which the member or beneficiary who is the spouse has selected the actuarial refund or a payment option payable for a period of less than ten (10) years, the retirement office shall mail to the member or beneficiary who is the spouse the Form 28, Direct Rollover/Direct Payment Election Form for Actuarial Refunds and Monthly Payments, dated August 1993 [~~December 1992~~], along with the Special Tax Notice, dated December 1992.

(2) The member or beneficiary who is the spouse shall complete the Form 28 and return it to the retirement office. If the member or beneficiary who is the spouse intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the member or beneficiary shall have the trustee or institution complete the back of the form certifying that the rollover will be accepted.

(3) The payment options selected by the member or beneficiary who is the spouse shall not be processed until the completed Form 28 is returned to the retirement office.

Section 3. (1) If the alternate payee is eligible for a lump sum portion of the member's contribution account under a qualified domestic relations order, the Form 27 along with a Special Tax Notice shall be mailed to the alternate payee. If the alternate payee selects an actuarial refund or payment option payable for a period of less then ten (10) years, a Form 28 along with a Special Tax Notice shall be mailed to the alternate payee.

(2) The alternate payee shall complete the Form 27 or Form 28 and return it to the retirement office. If the alternate payee intends to have the eligible portion of the funds rolled over directly into an IRA or other plan, the alternate payee shall have the trustee or institution complete the back of the Form 27 or Form 28 certifying that the rollover will be accepted.

(3) The payment of an actuarial refund or a payment option of less than ten (10) years under the qualified domestic relations order shall not be processed until the completed Form 28 is returned to the retirement office. If the payment is a portion of the member's contribution account and the alternate payee does not return the Form 27 within thirty (30) days of receipt of the form, the payment shall be processed and the alternate payee's portion of the refund shall be treated for federal income tax purposes as if the alternate payee had made an election to receive the funds.

Section 4. The forms required by the administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m.

JOHN D. ROBEY, Chairman

APPROVED: August 19, 1993

FILED WITH LRC: September 10, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1993, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 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 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, (502) 564-4646.

REGULATORY IMPACT ANALYSIS

Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: This proposed amendment only applies to members of the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System.

(a) Direct and indirect costs or savings to those affected: This administrative regulation establishes the forms to be used by members electing a lump sum or other payment subject to new federal rollover and income tax withholding provisions.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The forms have been modified to include language required by the Internal Revenue Service. Specific language allowing the member to waive a 30-day period for processing has been added to the forms for federal tax treatment. This waiver will provide faster processing of refunds for certain members, primarily those who have not contributed to the system for several months.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Addition of the language on the forms will allow the agency to process lump sum payments in the established manner without creating a new procedure to delay issuance.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation has no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation contains requirements of the Internal Revenue Service and PL 102-318.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This proposed amendment will allow the issuance of refunds or lump sum payments at the member's request in less than 30 days when possible. A member may take 30 or more days to determine tax treatment of his benefit, but if he makes his election earlier, the retirement system will be allowed to initiate the payment process upon receipt of the form.

TIERING: Is tiering applied? Yes. This administrative regulation modifies the forms used by all members of the three retirement systems and provides equal treatment with regard to processing of lump sum payments.

BOARD OF EMBALMERS AND FUNERAL DIRECTORS
(Proposed Amendment)

201 KAR 15:030. Application for examination.

RELATES TO: KRS 316.050

STATUTORY AUTHORITY: KRS 316.210(4)

NECESSITY AND FUNCTION: Sets forth the procedure for making application to take the Funeral Director's or Embalmer's examination.

Section 1. Application for Examination; fees. An applicant for

funeral director's or embalmer's examination shall file his application, under oath, with the board for examination on a form prescribed by the board at a time not later than thirty (30) days prior to the date set by the board for such examination. Such application shall include sworn statements by the licensed funeral director and licensed embalmer under whom the required apprenticeship was served as sworn proof that same was actually served as required by law governing funeral directors and embalmers in Kentucky. The application shall be accompanied with a fee of thirty-five (35) dollars for each examination. This fee shall include license in good standing for the remainder of the fiscal year if the applicant is successful in his examination.

EDD PRESTON, President

APPROVED BY AGENCY: August 25, 1993

FILED WITH LRC: August 27, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on the 22nd day of October, 1993, at 9 a.m., in Room 327, State Capitol, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 17th day of October, 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: Bill Pettus, Assistant Attorney General, Office of the Attorney General, 209 St. Clair Street, Room 205, Frankfort, Kentucky 40601, (502) 564-4994.

REGULATORY IMPACT ANALYSIS

Contact Person: Bill Pettus

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no additional direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no additional direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation amends the title of the regulation to more accurately describe its content. The alternative of not amending the regulation was rejected because this would not provide a title which is fully descriptive.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute, administrative regulation, or government policy.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because all embalmers and funeral directors are treated uniformly under the law.

GENERAL GOVERNMENT CABINET
Board of Veterinary Examiners
(Proposed Amendment)

201 KAR 16:010. Code of ethical conduct.

RELATES TO: KRS 321.351(1)(h)

STATUTORY AUTHORITY: KRS 321.235

NECESSITY AND FUNCTION: KRS 321.351 provides for the suspension or revocation of a certificate of license, imposition of probationary conditions or an administrative fine, or the issuance of a written reprimand for any violation of the code of ethical conduct promulgated by the board. This administrative regulation sets forth certain acts or inaction which shall constitute a code of ethical conduct for each licensed practitioner.

Section 1. A veterinarian shall take sufficient time and conduct the appropriate tests necessary to diagnose the condition of the patient which he is treating.

Section 2. A veterinarian shall bill accurately and truthfully for services rendered.

Section 3. A veterinarian shall maintain adequate equipment to treat patients that he is called upon to treat in the practice of veterinary medicine.

Section 4. A veterinarian shall maintain his service premises and all equipment thereon in a clean and sanitary condition.

Section 5. A veterinarian shall not issue a certificate of health unless he has personal knowledge through actual examination and appropriate testing of the animal that the animal meets the requirements for the issuance of the certificate.

Section 6. A veterinarian shall not aid or abet the unlawful practice of veterinary medicine.

Section 7. (1) A veterinarian shall not sell, or offer for sale, prescription medicine or drugs at any place other than:

(a) His office, clinic, or hospital; or

(b) Other place where he is treating patients.

(2) The prescription drugs or medicines sold, or offered for sale, shall be used in the treatment of the patient the veterinarian is treating.

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

Section 8. A veterinarian shall not engage in false, misleading, or deceptive advertising.

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

Section 10. A veterinarian shall keep adequate and sufficient records of the examination and treatment of all patients for a period of five (5) years after the last examination of the patient.

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

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

(2) Furnished proof of such certification to the board.

Section 12. (1) A veterinarian shall not overutilize his practice.

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

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

(a) The patient's history and subjective symptoms;

(b) Objective findings;

(c) Reasonable clinical judgment; and

(d) Other information relevant to the practice of veterinary medicine.

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

(1) Disciplinary action taken against him; or

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

(3) the conviction, in any jurisdiction, of a:

(a) Misdemeanor; or

(b) Felony.

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

Section 15. A veterinarian shall not engage in any fraud, deceit, or misrepresentation in the procurement of a license to practice veterinary medicine.

Section 16. A veterinarian shall not practice veterinary medicine:

(1) So as to endanger the health and welfare of his patients or the public; or

(2) If his ability to practice with reasonable skill and safety is adversely affected by reason of excessive use of:

(a) Alcohol;

(b) Drugs;

(c) Narcotics;

(d) Chemicals; or

(e) Other substances.

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

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

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

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

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

Section 22. (1) A veterinarian shall not abuse or take advantage of the confidence reposed in him by his client.

(2) A veterinarian shall not enter into a business transaction with a client in which the veterinarian and his client have differing interests if the:

(a) Client reasonably expects the veterinarian to exercise his professional judgment for the protection of the client;

(b) Veterinarian has not fully disclosed his interest; and

(c) Client has not consented after full disclosure.

(3) Acceptance of a fee from both the buyer and the seller in a transaction shall constitute prima facie evidence of a conflict of interest.

(4) Acceptance of a fee from a buyer and a seller in an inspection of an animal for soundness shall constitute a conflict of interest.

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

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

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

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

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

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

Section 29. (1) If treatment is initiated, it shall be completed unless terminated by the client.

(2) A veterinarian shall have the right to refuse to:

(a) Admit as an inpatient to his hospital or clinic an animal that is not currently vaccinated; or

(b) Render veterinary medical services for an owner who physically or verbally abuses the veterinarian or his employee.

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

~~Section 31.~~] A veterinarian shall not neglect a patient under his care.

Section 31. [~~32.~~] A veterinarian shall, where possible, preserve the body of any patient which dies while in the veterinarian's care while its owner is away, except as otherwise provided by law.

Section 32. [~~33.~~] A veterinarian shall obtain the consent of the owner before disposing of any patient which dies while in the veterinarian's care, provided such consent is given within a reasonable time. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section 33. [~~34.~~] A veterinarian shall obtain the consent of the patient's owner or agent before administering general anesthesia or performing any surgical procedure, unless circumstances qualifying as an emergency do not permit obtaining such consent.

Section 34. [~~35.~~] A veterinarian shall post at his facility and make available over the telephone his policy regarding the hours, emergency coverage, and other similar provisions for the operation of his facility.

Section 35. [~~36.~~] A veterinarian shall ascertain, before hiring, whether a potential veterinarian employee has a valid, current Kentucky license to practice veterinary medicine and shall be responsible for ascertaining whether the license to practice veterinary medicine of any veterinarian employee is current.

Section 36. [~~37.~~] A veterinarian shall obtain the consent of a patient's owner or agent before transporting a patient to another facility for veterinary medical care or any other reason, unless circumstances qualifying as an emergency do not permit obtaining such consent.

JOHN McCLURE, Board Chairman

APPROVED BY AGENCY: September 9, 1993

FILED WITH LRC: September 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 25, 1993, at 9 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 L. Nicholas, Director, Division of Occupations and Professions, P. O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: All licensees.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with this regulation.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Removes part of code of ethical conduct allowing a veterinarian to keep an animal where the bill had not been paid.

(a) Direct and indirect costs or savings: There will not be any costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners and applicants will be subject to this regulation in the same ways.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to seasons and limits for wild turkey. The commissioner with the concurrence of the commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. This amendment is necessary to designate currently appropriate turkey hunting rules and seasons for specific counties and wildlife management areas.

Section 1. Definition. "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

Section 2. Seasons and Counties Open to Wild Turkey Hunting. Wild turkey hunting season shall begin on the third Wednesday in April for fourteen (14) consecutive days and either sex archery only from October 1 through October 31 in Adair except west of Highway 61, Allen east of Highway 31E, Anderson [~~west of Highway 127~~], Ballard, Barren north of I-65, Barren south of Highway 1297 and west of Highway 249, Bath south of I-64, Bell, Boone, Boyd south of I-64, Boyle south of Highway 37 and west of Carpenter Fork Road, Bracken, Breathitt east of Highway 15 [~~and south of Highway 30~~], Breckinridge [~~northwest of Highway 79~~], Bullitt [~~south of Salt River~~], Butler, Caldwell, Calloway, Carlisle, Campbell [~~except south of Highway 62 and east of Highway 51~~], Carroll, Carter north of I-64, Casey north of Highway 49 west of Jacktown and north of Highway 78 east of Jacktown [~~west of Highway 127~~], Christian, Clark, Clinton except north of Highway 90 and east [~~west~~] of Highway 127 [~~558~~], Crittenden [~~south of Highway 120 and east of Highway 641, south of Highway 70~~], Cumberland, Daviess north of Highway 54, Edmonson, Elliott, Estill north of the Kentucky River, Floyd east of Highway 23, Franklin except south of Highway 12 O'Nan's Bend Road and west of Kentucky River, Fulton, Gallatin, Garrard south of Highway 52, Grant north of Highway 22 and west of I-75, Graves, Grayson [~~except east of Highway 259 and north of West Kentucky Parkway~~], Green [~~north of Highway 569, Greenup west of Highway 7~~], Hancock southeast of Highway 1389, Hardin [~~except north of Highway 86 and northwest of Highway 62~~], Harlan, Harrison east of Highway 27, Hart [~~except east of Highway 31E and south of Green River~~], Henry, Henderson west of Highway 41, Hickman, Hopkins, Jackson north of Highway 30, Jefferson, Knott, Knox south of Highway 25E, Larue except south of Highway 61 and west of Highway 31E, Laurel west of I-75, Lawrence north of Highway 32, Lee west of Highway 11,

Letcher, [~~Lewis east of Highway 59 and north of Highway 474~~], Lincoln east of Highway 27, Livingston, Logan except southeast of Highway 79 and southwest of Highway 100, Lyon, Madison east of I-75 and north of Highway 52, Magoffin south of Mountain Parkway west of Salyersville and south of Highway 114 east of Salyersville, Marion [~~east of Highway 55 north of Lebanon and east of Highway 208 south of Lebanon, southwest of Highway 49 and west of Highway 55~~], Marshall, Martin south of Highway 40, Mason, McLean south of Highway 138 and west of Highway 81, McCracken, McCreary, Meade [~~northwest of Highway 79~~], Menifee, Mercer except south of Highway 1160 and west of Highway 127, Metcalfe south of Cumberland Parkway, Monroe [~~south of Highway 100~~], Morgan north of Highway 519 and west of Highway 7, Muhlenberg [~~except north of Highway 70 between Highway 181 and Highway 431~~], Nelson [~~west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown~~], Ohio west of Green River Parkway, Oldham [~~north of I-71~~], Owen except south of Highway 22 and east of Highway 227, Owsley [~~north of Highway 30 and west of Highway 399~~], Pendleton east of Highway 27 and south of Highway 22, Perry [~~north of Highway 80 and east of Highway 15~~], Pike east of Highway 23, Powell, Pulaski except north of Highway 80 and west of Highway 461, [~~south of the Cumberland River, south of Highway 80 and east of Buck Creek,~~] Robertson, Rockcastle south of Highway 150 and west of I-75, Rockcastle east of Highway 1955, Rowan, Russell [~~west of Highway 127 and south of Highway 92~~], Scott east of I-75, Shelby, Simpson west of Highway 31W, [~~east of Highway 55 and north of Highway 12,~~] Spencer [~~west of Highway 55~~], Taylor [~~north of Highway 70, south of Highway 70 and northeast of Highway 76~~], Todd, Trigg, Trimble [~~east of Highway 421~~], Union north of Highland Creek, Warren north of Highway 80 and west of Highway 185 [~~southwest of the Green River Parkway and northwest of Highway 80~~], Washington [~~east of Highway 55~~], Wayne, [~~southeast of Highway 90, and~~] Whitley north of Highway 90 and west of Highway 25W, Wolfe north of Mountain Parkway and west of Highway 746.

[~~(2) From October 1 through October 31, a hunter shall be permitted to hunt either sex only by archery in Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bath south of I-64, Bell, Breckinridge northwest of Highway 79, Bullitt south of the Salt River, Butler, Caldwell, Calloway, Carroll, Christian, Crittenden south of Highway 120 and east of Highway 641, south of Highway 70, Cumberland, Edmonson, Gallatin, Graves, Grayson except east of Highway 259 and north of West Kentucky Parkway, Hardin south of West Kentucky and Bluegrass Parkways, Harlan, Hart except east of Highway 31E and south of Green River, Henry, Hickman, Hopkins, Jackson north of Highway 30, Larue except south of Highway 61 and west of Highway 31E, Letcher, Livingston, Logan except southeast of Highway 79 and southwest of Highway 100, Marion southwest of Highway 49 and west of Highway 55, Marshall, Martin south of Highway 40, McCracken, McCreary, Meade northwest of Highway 79, Menifee, Monroe south of Highway 100, Muhlenberg except north of Highway 70 between Highway 181 and Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Owen except south of Highway 22 and east of Highway 227, Taylor north of Highway 70, south of Highway 70 and northeast of Highway 76, Todd, Trigg, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90.~~]

(2) [~~(3)~~] All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 5 of this regulation.

Section 3. Bag and Possession Limits. A hunter shall be prohibited from taking more than:

(1) Three (3) turkeys in a calendar year;

(2) Two (2) turkeys with visible beards per spring season;

(3) One (1) turkey per day; and

(4) One (1) turkey in the fall.

Section 4. Requirements and Restrictions. (1) The use of dogs is prohibited.

(2) All turkey hunters shall have in their possession a valid wild turkey permit and, unless exempted by KRS 150.170(3), (5), (6), (7) or (8), a valid annual Kentucky hunting license.

(3) Turkey shall be taken only from one-half (1/2) hour before sunrise until 1 p.m. During fall seasons, turkey shall be taken only during daylight hours. Shooting turkey while they are roosting shall be prohibited.

(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.

(5) Shotguns no larger than ten (10) gauge or no smaller than twenty (20) gauge are the only firearms which shall be used or possessed while turkey hunting. Only Number 4 shot or smaller shall be used. Shot larger than Number 4 or slugs shall not be possessed while turkey hunting.

(6) Longbows, recurve and compound bows which do not have devices to hold an arrow at full or partial draw without human aid are the only archery equipment which shall be used. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(7) The hunter shall attach the transportation tag to the turkey immediately after taking.

(a) Any hunter harvesting a wild turkey shall have it checked at the nearest check station or by the nearest available conservation officer on the day the turkey is taken except as required on specified wildlife management areas.

(b) The hunter shall fill out an official game check card and submit it to the check station operator or conservation officer.

1. The hunter's portion of this card shall be retained in the hunter's possession until the turkey is processed.

2. A completed state, Fort Campbell, or Land Between the Lakes game check card shall be attached to and remain with any turkey taken to a taxidermist.

(c) Turkeys shall be checked before being transported out of the state.

(8) Turkeys may be taken with the aid of decoys. Live turkeys shall not be used as decoys.

(9) Turkeys shall not be hunted on any baited area or be taken by the aid of baiting.

(a) These areas shall be considered baited for thirty (30) days following the complete removal of all bait.

(b) The limitation found in paragraph (a) of this subsection shall not prohibit hunting while turkeys on areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.

(10) Turkeys shall not be hunted from boats.

(11) All turkey hunters less than eighteen (18) years of age shall be accompanied by an adult who shall maintain reasonable control of the underage hunter at all times while hunting.

(12) Calling or attempting to call wild turkeys using any turkey call to mimic the sounds made by a wild turkey shall be prohibited from March 1 to the opening day of spring turkey season in any area open to turkey hunting. This shall not apply to places where turkeys are not reasonably expected to occur.

(13) Turkeys shall not be taken by any means other than those specified in this administrative regulation.

Section 5. Seasons and Exceptions on Wildlife Management Areas. All provisions of this administrative regulation apply unless otherwise specified in this section.

(1) Wild turkey season in the Fort Knox Wildlife Management Area, located in Hardin, Bullitt and Meade Counties, shall be open on Saturdays and Sundays in April and the first two (2) Saturdays and

Sundays in May.

(a) Hunters shall check turkeys by 2 p.m. on the day harvested.

(b) Hunters shall be permitted to take [~~bag~~] one (1) turkey per season.

(c) Turkeys taken on Fort Knox shall not count against statewide limits and shall not have to be tagged.

(d) Turkey hunters shall hunt in assigned area(s) only.

(2) Wild turkey season in the Land Between the Lakes Wildlife Management Area, located in Trigg and Lyon Counties, shall be a two (2) day quota hunt beginning the second Wednesday in April; a three (3) day quota hunt beginning the first Saturday following the second Wednesday in April; and a fourteen (14) consecutive day nonquota hunt beginning on the third Wednesday in April. [~~open on April 21, 22, 24, 25 and 26 with an advanced application required, and April 28 through May 11.~~]

(a) Wild turkey shall be taken only in designated areas.

(b) Hunters shall:

1. Check in and out;

2. Check a turkey before leaving the Land Between the Lakes; and

3. [~~Shall~~] Affix an LBL game check card to the carcass.

(c) State game check cards shall not be required.

(d) Shooting hours shall be limited to daylight hours.

(e) Hunters shall be permitted to take [~~bag~~] one (1) turkey per season.

(3) Wild turkey season in the Reelfoot National Wildlife Refuge, located in Fulton County, shall be open for quota hunt on the first Friday in April for three (3) consecutive days. [~~April 2, 3, and 4.~~]

(a) Hunters shall be permitted to take [~~bag~~] one (1) turkey per season.

(b) A Reelfoot permit shall be required.

(c) Turkeys shall be checked at the closest county check station on the day harvested.

(4) Wild turkey season in the Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties, shall be open the first Saturday in April through the second Sunday in May.

(a) [~~Hunting shall not be permitted on Tuesdays or Wednesdays.~~

~~(b)~~] A post combination hunting-fishing permit shall be required.

(b) [~~(c)~~] Shooting hours shall be limited to daylight hours.

(c) [~~(d)~~] Hunters shall be permitted to take [~~bag~~] two (2) turkeys per spring season.

(d) [~~(e)~~] Turkeys taken on Fort Campbell shall not count against statewide limits and shall not have to be tagged.

(e) [~~(f)~~] A Fort Campbell game check card shall be attached to turkeys before leaving the post and shall remain on the bird until processed.

(f) [~~(g)~~] State game check cards shall not be required.

(5) Wild turkey season in the Blue Grass Ordnance Depot Activity, located in Madison County, shall be open on the third Wednesday in April for fourteen (14) consecutive days.

(6) Wild turkey season in the Ballard Wildlife Management Area in Ballard County [~~north of Terrell Landing Road~~] and Grayson Lake Wildlife Management Area in Carter County and that portion in Elliott County east of Bruin Creek shall be open only for quota youth hunt Saturday and Sunday preceding the third Wednesday in April. The Green River Wildlife Management Area in Adair and Taylor Counties shall be open for a quota youth hunt Saturday and Sunday preceding the third Wednesday in April.

(a) Hunters shall be permitted to take [~~bag~~] one (1) turkey per season.

(b) Shooting hours shall be limited to one-half (1/2) hour before sunrise until noon.

(c) Hunters shall be required to check in and out daily.

(d) Hunting shall be restricted to persons at least ten (10) years of age but who have not reached their 16th birthday. Each youth shall be accompanied by an adult and hunt in assigned areas only.

(e) An in-person drawing shall be held on the respective wildlife management area at 1 p.m. on the first Saturday in April to determine who will get to hunt.

(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.

(8) Wild turkey season in the Higginson-Henry Wildlife Management Area, located in Union County, shall be open only for archery the third Wednesday in April for nineteen (19) consecutive days and either sex, October 1 through 31. Hunters shall be required to check in and check out daily.

(9) Robinson Forest Wildlife Management Area in Breathitt and Knott Counties shall be closed to turkey hunting.

(10) West Kentucky Wildlife Management Area in McCracken County shall be closed to turkey hunting.

(11) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties shall be open to legal muzzle-loading shotguns only.

(a) Breech-loading shotguns shall be prohibited.

(b) Legal archery equipment and crossbows with a working safety shall be permitted.

(12) Redbird Wildlife Management Area in Clay and Leslie Counties [~~Fishtrap Wildlife Management Area in Pike County~~] shall be open to turkey hunting.

DON R. MCCORMICK, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: September 13, 1993

FILED WITH LRC: September 14, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 29, 1993 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 24, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406.

REGULATORY IMPACT ANALYSIS

Agency Contact: Don R. McCormick

(1) Type and number of entities affected: Approximately 15,000 persons will participate in the wild turkey hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a wild turkey permit. Indirect costs are determined by the individual hunter, depending upon his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license, a spring wild turkey permit and a fall archery permit unless exempt by regulations.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Hunters will be asked to check their turkey at a check station and fill out a tag denoting specific information about the turkey taken.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcing the administrative regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $80,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 15,000 turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $46 per day of big game hunting according to the 1985 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that wild turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied: Yes. Only one class of citizen, the hunter, is impacted by this regulation. However, wild turkey are unevenly distributed across the state of Kentucky and only certain counties have sufficiently large turkey populations to warrant hunting. This regulation recognizes the variations in turkey populations and only opens certain counties.

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 whether this administrative regulation will affect the local government or only a part or division of the local government. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks office serves as a distribution system for the hunting licenses required by this administrative regulation.

4. How does this administrative regulation affect the local government or any service it provides? The County Clerk's office personnel are involved in the sale of hunting licenses and turkey tags. This office receives a $.75 fee for selling licenses and turkey tags. The county district courts are utilized for prosecution of cases made against violators of this regulation and recover their costs as the court cost portion of any levied fines.

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 September 15 [~~August 12~~], 1993, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-15	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 and Pretrial Contract Hold Status Inmates [~~(Amended 8/12/93)~~]
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates (Amended 9/15/93)
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures [~~(Amended 8/12/93)~~]
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 Procedure and Regulations [~~(Amended 8/12/93)~~]
KSR 16-01-03	Night Visit Regulations [~~(Amended 8/12/93)~~]
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: September 15, 1993

FILED WITH LRC: September 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 25, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 530 employees of the Kentucky State Reformatory, 1402 inmates, and all visitors to state correctional institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Monthly submission of policy revisions.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These administrative regulations are in conformity with those provisions.

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

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-15	Legal Assistance
KSP 02-01-01	Inmate Commissary Program
KSP 02-08-01	Inventory Records and Control
KSP 02-11-01	Requisition and Purchase of Supplies and Equipment
KSP 02-12-01	Inmate Personal Funds
KSP 05-02-01	Management Information System (Amended 9/15/93)
KSP 06-01-01	Inmate Records (Amended 9/15/93)
KSP 060000-02	Special Management Units: Assignment, Classification Review and Release
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs/Safety Inspections of Inmate Work Locations
KSP 09-08-01	Searches and Preservation of Evidence
KSP 10-02-05	Special Security Unit
KSP 10-04-01	Special Needs Inmates
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-08	Behavioral Counseling Record
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-12	Unit Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-18	Functions of the Classification Committee
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 13-01-01	Pharmacy Procedures
KSP 13-02-01	Hospital Services
KSP 13-02-02	Sick Call
KSP 13-02-03	Health Evaluations
KSP 13-02-04	Emergency Medical Procedure
KSP 13-02-05	Consultations
KSP 13-02-08	Medical Records
KSP 13-02-09	Psychiatric and Psychological Services
KSP 13-02-11	Psychological/Psychiatric Treatment Upon Release
KSP 13-02-12	Dental Services for Special Management Units
KSP 13-02-13	Optometric Services
KSP 130000-10	Execution Plan
KSP 14-03-01	Marriage of Inmates
KSP 14-06-01	Inmate Grievance Procedure
KSP 15-01-01	Inmate Grooming and Dress Code
KSP 15-03-01	Award of Meritorious Good Time
KSP 15-06-01	Due Process/Disciplinary Procedures
KSP 15-10-01	Discharge of Inmates by Shock Probation
KSP 16-01-01	Visiting Program [~~(Amended 4/15/93)~~]
KSP 16-02-01	Inmate Correspondence
KSP 16-03-02	Inmate Telephone Access
KSP 16-04-01	Inmate Packages (Added 9/15/93)
KSP 17-01-01	Inmate Personal Property
KSP 18-15-01	Protective Custody Unit
KSP 19-05-01	Correctional Industries
KSP 20-04-01	Educational Programs

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: September 15, 1993
FILED WITH LRC: September 15, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 25, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron and William Seabold, Corrections Cabinet, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 308 employees of the Kentucky State Penitentiary, 782 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Proposed Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Parts 383, 390-397
STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Parts 383, 390-397
NECESSITY AND FUNCTION: This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:
(a) To transport agricultural products from his farm;
(b) To transport farm machinery or farm supplies to his farm; or
(c) Generally thought of as farm machinery; and
(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.
(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.
(3) "Load limit" means the rated seating capacity for which a passenger-carrying vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. Governing Federal Regulations. All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:
(1) Title 49, Code of Federal Regulations Part 383, Commercial Driver's License Standards; Requirements and Penalties, effective as amended through November 9 [~~February 20~~], 1992;
(2) Title 49, Code of Federal Regulations Part 390, General, effective as amended through August 23, 1993 [~~31, 1992~~];
(3) Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through June 21, 1993 [~~August 27, 1992~~];
(4) Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective as amended through November 15, 1988;
(5) Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of November 24, 1989;
(6) [~~Title 49, Code of Federal Regulations, Part 394, Notification, Recording and Reporting of Accidents, effective as amended through December 21, 1988;~~
~~(7)~~] Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through August 31, 1992;
(7) [~~(8)~~] Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, as effective October 8, 1992; and
(8) [~~(9)~~] Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective as amended through September 24, 1992.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this regulation are adopted:
(1) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Part 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.
(2)(a) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted in this administrative regulation.
(b) In spite of the requirements specified in paragraph (a) of this subsection, any operator of one (1) of these vehicles who is required

by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or having [e] received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(3) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for transporters of hazardous materials under 601 KAR 1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be twenty- one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) Electric utility motor carriers while operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore electric power.

(7) Motor carriers which operate exclusively in intrastate commerce shall be exempt from the drug testing requirements of 49 CFR Parts 391 and 394.

(8) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(9) Motor carrier vehicles operated exclusively in intrastate commerce may comply with the provisions of 601 KAR 1:160 rather than 49 CFR Part 390.21.

Section 4. Buses. (1) Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a [~~such~~] position [~~as~~] to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A [~~No~~] bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A [~~No~~] passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Cargo Securement. (1) The "CVSA Cargo Securement Tie-down Guidelines" adopted on February 15, 1992 by the Commercial Vehicle Safety Alliance is hereby incorporated by reference as part of this administrative regulation. The criteria in this document shall apply to the devices used in securing loads to commercial motor vehicles.

(2) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be inspected, copied or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

Section 7. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" adopted on June 21, 1993 [~~February 15, 1992~~] by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2)(a) If a commercial vehicle is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the motor vehicle is further operated.

(b) [~~In accordance with Part II of the "North American Uniform Out-of-service Criteria", a law enforcement officer may impose restricted service conditions instead of placing the commercial motor vehicle out-of-service.~~

~~(c)~~] Refusal of the vehicle operator to grant permission for a law enforcement officer to conduct a safety inspection of the vehicle shall be cause for the officer to place the vehicle out-of-service until the permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of- service order shall constitute a separate violation of this administrative regulation.

(4) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be inspected, copied or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

NORRIS BECKLEY, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: September 1, 1993
FILED WITH LRC: September 9, 1993 at 3 p.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 27, 1993 at 2 p.m. local prevailing time in the Transportation Cabinet, Room 1003 of the 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 October 22, 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 non 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 October 22, 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. Written comments will be accepted until the close of business on October 27. 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: 30,000 motor carriers operating in Kentucky.

(a) Direct and indirect costs or savings to those affected: The proposed amendment allows a motor carrier to not file accident reports with the Federal Highway Administration. This will cause a slight reduction in the amount of paperwork the companies are required to do. On the other hand, the adoption of the latest out-of-service criteria which removes the restricted service option for certain vehicle violations will cause a few vehicles to have to remain at the out-of-service point until repaired.

1. First year: Minimal overall change in costs.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): None

(b) Reporting and paperwork requirements: The motor carrier company which has a commercial vehicle involved in an accident will have to retain in its files information on the accident.

(2) Effects on the promulgating administrative body: None as a result of this change.

(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 as a result of this change.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because the federal regulations are already applicable to all commercial vehicles being operated in interstate commerce and the federal government is strongly urging (later will mandate) states to apply the same provisions to intrastate operators.

(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: None

Tiering: Was tiering applied? Yes. The administrative regulation is tiered in that more stringent safety requirements are expected to be met on larger vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 390-399. These federal regulations extensively reference 49 CFR Part 383 relating to the commercial driver's license.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 383 and 390-397. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 398 relating to the transportation of migrant workers and 49 CFR Part 399 relating to motor carrier employee safety and health standards.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a) Commercial Driver's License standards for the issuance, testing and withdrawal of a CDL;

b) Establishes 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;

c) Establishes the maximum number of hours a commercial driver may be on duty and how he must keep a record of the amount of time he has worked;

d) Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate motor carriers;

e) Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;

f) Defines the parts and accessories necessary for the safe operation of a commercial vehicle;

g) Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be preformed by certified inspectors or mechanics; and

h) Driving and parking rules while transporting hazardous materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky with reluctantly given federal approval has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers do not have to establish a drug testing program while interstate companies must, the medical waiver program has been expanded, unless operating a school bus or transporting hazardous materials, the driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to

allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exemptions.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070
NECESSITY AND FUNCTION: KRS 156.095 and 156.0951 authorize the State Board for Elementary and Secondary Education to establish, direct, and maintain a statewide program of professional development training, with the relevant purpose of such a program being the improvement of instruction in the public schools, and mandate local school district consortia for professional development purposes; and KRS 158.070 requires the state board to adopt administrative regulations setting forth guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff. This administrative regulation implements these duties and powers. It identifies the components of professional development planning and requires each school, local district, and consortium of districts to submit annually professional development plans by which they are to be guided in providing suitable professional development training programs and in requiring all instructional leaders to participate in the statewide training program implemented under KRS 156.101.

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) "Professional development" means activities and experiences which enable educators to improve their skills and abilities or increase their understanding and knowledge to better facilitate the learning of children, and which shall be determined by identified needs and related to the goals of the Kentucky Education Reform Act (KERA).

(2) "Needs assessment" means the gathering, sorting, and analysis of data that lead to conclusions regarding the need for professional development in identified areas.

(3) "Professional development plan" means an outline of a process to achieve defined standards, goals, or objectives that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished.

Section 2. Each professional development consortium, school, and local district shall have on file with the State Department of Education a professional development plan that meets the following seven (7) standards:

(1) The goals, objectives, and sessions or experiences of plans are focused on the goals of KERA;

(2) The plan was developed through active participation and input at the local school level;

(3) The plan gives attention to professional growth needs at different stages of development (i.e., orientation, preparation, implementation, impact);

(4) The plan provides sufficient opportunities for professional growth in designated KERA goals throughout the school year;

(5) The plan provides professional development sessions, experiences, and activities that directly address the needs identified in the needs assessment;

(6) The plan describes standards and a process that ensure the delivery of high quality professional development sessions, experiences, and activities; and

(7) The plan describes a structure and process for evaluating professional development sessions, experiences, and activities and for making subsequent improvements in the professional development program.

Section 3. The professional development plan shall include the following components:

(1) Name of consortium, district, or school;

(2) Persons involved in the planning process;

(3) Description of needs assessment, including a brief description of procedures implemented to determine how the professional development needs were assessed and the results of the assessment;

(4) Description of planning process;

(5) A description of specific professional development sessions, experiences, and activities planned to accomplish the goals and objections; and

(6) A description of evaluation, including:

(a) An explanation of how professional development sessions, experiences, and activities implemented and operated at all levels shall be evaluated; and

(b) A description of how the professional development plan shall be evaluated.

Section 4. (1) The professional development plan shall address any instructional improvement or training needs that are in accordance with the goals of KERA.

(2) Professional development activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall support the local school's instructional improvement goals and objectives identified in the professional development plan.

(3) Activities for professional development credit of classroom teachers shall not supplant any of the six (6) hour instructional day.

(4) Professional development activities shall not occur on snow days. Districts may, however, report flexible professional development activities on snow days. This situation involves a calendar change only, and it shall not result in activities on snow days.

(5) Professional development credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made for university courses that are clearly supportive of the professional development plan.

(6) Professional development credit shall not be awarded for those activities that provide remuneration beyond travel, food and lodging.

(7) Districts implementing a flexible professional development schedule shall award professional development credit for any given academic school year within the date limitations of the professional development plan.

(8) Appropriate professional development sessions, experiences, and activities shall be those which address instructional improvement for the school district, an individual school or a group of teachers in accordance with the goals of KERA. Activities which are not appropriate for professional development credit include the following: organizational business meetings, compiling class rosters, scheduling, textbook adoption committee meetings, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities, PTA/PTO meetings, sporting events, field trips, and parent-teacher conferences.

Section 5. (1) Each superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator for the local district.

(2) The minimum qualifications for the appointment shall be a valid Kentucky certificate as a principal or supervisor.

(3) The duties of the district professional development coordinator are as follows:

(a) Facilitates needs assessments for professional development and the development of goals and objectives for training programs and projects. Beginning in July, 1991, needs assessments and development of goals and objectives shall be carried out in conjunction with the school council or professional development committee of each school.

(b) Provides technical assistance to school councils or professional development committees in the establishment of a school plan for professional development for the local district.

(c) Completes, in conjunction with the consortium, a professional development plan [~~for inclusion in the Educational Improvement Plan~~].

(d) Serves as chairperson of district's Professional Development Committee.

(e) Coordinates the planning, implementation and evaluation of the professional development program in conjunction with the school and district professional development committees and the consortium.

(f) Meets regularly with administrators and teachers to establish future goals and identify specific training needs of the district's personnel.

(g) Coordinates the establishment of procedures, timetables, preparation of necessary forms and letters, assignment of workshop sites and all other practical elements of professional development training.

(h) Maintains all professional development records, documentation, and other pertinent records.

(i) Interprets the professional development programs' objectives, results, and needs to school professional development committees, district staff, the board, civic and parent groups, teacher training institutions and others as appropriate.

(j) Keeps updated on current professional development trends.

(k) Maintains continuous liaison with Kentucky Department of Education, the consortium to which the district belongs and other agencies involved with the district in the provision of professional development activities.

Section 6. By the effective date of this regulation, each local school, district, and consortium shall develop a plan for professional development. This plan shall describe training activities which the school, district, and consortium will provide for its certified staff within the goals of KERA. The consortium plan, along with the plans of its member districts and schools shall be submitted to the Department of Education prior to the implementation of the plans.

Section 7. Additional standards for the school, district, and consortium professional development plans are in the document "Professional Development Planning Process", dated September, [~~January~~] 1993, which is hereby incorporated by reference and may be obtained from the Division of Professional Development, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky, any time between 8 a.m. - 4:30 p.m., Monday through Friday.

Section 8. No more than fifteen (15) percent of each local district's professional development funds shall be used for administrative purposes.

Section 9. When implementing professional development programs under KRS 158.070, each local school, district, or consortium of districts shall adhere to its professional development plan as developed with technical assistance as requested from the Department of Education.

Section 10. Any school, district, or consortium not complying with Sections 1 through 9 of this administrative regulation shall be required to personally appear through appropriate representatives before the State Board for Elementary and Secondary Education in order to offer explanation for noncompliance.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: September 14, 1993

FILED WITH LRC: September 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 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 October 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 Kevin M. Noland, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Audrey Carr

(1) Type and number of entities affected: All school and district employees.

(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: Requires schools, districts, and consortia (established by KRS 156.095(1)) to develop plans for professional development and monitor the professional development of their employees/constituencies.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None (cost $16/child average daily attendance).
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Requires maintaining copies of professional development plans and collecting qualitative and quantitative data of plan implementation.

(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.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:345. Evaluation guidelines.

RELATES TO: KRS 156.101
STATUTORY AUTHORITY: KRS 156.070, 156.101
NECESSITY AND FUNCTION: KRS 156.101 requires the State Board for Elementary and Secondary Education to develop written guidelines for local school districts to follow in developing and implementing an evaluation system. This administrative regulation establishes the requirements for the evaluation programs and policies of local school districts.

Section 1. Definitions. (1) "Teacher" means any certified staff person who directly instructs students.

(2) "Administrator" means any certified staff person who devotes the majority of his employed time to service as a principal, assistant principal, supervisor, coordinator, director, assistant director, administrative assistant, finance officer, pupil personnel worker, guidance counselor, or school business administrator including the superintendent and any assistant, associate, or deputy superintendent [~~other than the classroom teacher or librarian~~].

(3) "Other support staff" means any certified staff other than teacher or administrator.

(4) "Evaluation" means the process of assessing or determining the effectiveness of the performance of the certified employee in a given teaching and learning or leadership and management situation, based on predetermined criteria, through periodic observation and other documentation such as portfolios, peer reviews, products and performances [~~means of gathering information~~]. Evaluation shall also include the establishment and monitoring of a professional growth plan.

(5) "Formative evaluation" means a continuous cycle of collecting evaluation information and interacting and [~~or~~] providing feedback with [~~and~~] suggestions regarding the certified employee's professional growth and [~~teaching or administrative~~] performance.

(6) "Summative evaluation" means the summary of, and conclusions from, all evaluation data, including but not limited to the formative evaluation data. The summative evaluation occurs at the end of an evaluation cycle. Summative evaluation includes a conference involving the evaluator and the evaluated certified employee, and a written evaluation report.

(7) "Observation" means a process of gathering information in the performance of duty, based on predetermined criteria in the district plan.

(8) "Conference" means a meeting involving the evaluator and the certified employee evaluated for the purpose of providing feedback from the evaluator, analyzing the results of observation(s) and other information to determine accomplishments and areas for growth leading to establishment or revision of a professional growth plan.

(9) "Performance criteria" means performance areas, skills, or outcomes on which the certified employee shall be evaluated based on position and the district plan.

(10) "Indicators" means measurable behaviors and outcomes which demonstrate performance criteria.

(11) "Standards of performance" means acceptable qualitative or quantitative level of performance expected of effective teachers or administrators.

(12) "Position" means [~~term used to signify~~] a professional role in the school district (e.g., teacher, secondary principal, supervisor of instruction).

(13) "Job category" means term used to signify a group or class of positions with closely related functions (e.g., principal, coordinator, director).

(14) "Professional growth plan" means a plan whereby the person being evaluated establishes goals for enrichment and development and the assistance of the evaluator is identified [~~evaluatee is given assistance for becoming more proficient as a teacher or administrator~~]. The individualized plan includes objectives, a plan for achieving the objectives and method for evaluating success. The individualized professional growth plan shall be aligned with specific goals and objectives of the school improvement and professional development or transformation plans.

Section 2. Each local school district shall have an evaluation plan and procedures approved by the State Board for Elementary and Secondary Education. Approval of the plan and procedures shall be for the purpose of certification as to the compliance of each specific school district's evaluation plan with the broad guidelines set forth herein.

Section 3. The local school district shall have a written policy for the evaluation of all certified employees consistent with KRS 156.101. [~~Strict compliance with the policy shall be required.~~]

Section 4. (1) An evaluation committee consisting of equal numbers of teachers and administrators shall develop evaluation procedures and forms. The evaluation procedures and forms shall be designed to foster professional growth and to support individual personnel decisions.

(2) The procedures shall provide for both formative evaluation and summative evaluation and shall include the following elements:

(a) The immediate supervisor of the certified school employee shall be designated the primary evaluator. Additional trained administrative personnel may be used to observe and provide information to the primary evaluator.

(b) All monitoring or observations of performance of a certified employee shall be conducted openly and with the full knowledge of the teacher or administrator. The local district may determine the length and frequency and nature of observations conducted by an evaluator.

(c) The evaluation system shall include a professional growth plan aligned with specific goals and objectives of the school improvement and professional development transformation plans and shall be reviewed annually.

(d) Evaluation shall include formative conferences between the evaluator and the person evaluated within one (1) work week following each observation. In addition, the summative conference shall be held at the end of the evaluation cycle and include all evaluation data.

(e) Evaluation with multiple observations shall occur annually for each nontenured certified employee. The formative data collected during the beginning teacher internship period may be utilized in summative evaluation of the intern.

(f) Multiple observations shall be conducted with tenured, certified employees whose observation results are unsatisfactory.

(g) Summative evaluation shall occur a minimum of once every three (3) year period for each tenured teacher.

(h) Summative evaluation shall occur annually for administrators [~~except for superintendent who shall be evaluated not less than every two (2) years~~].

(i) All evaluations of certified employees below the level of the district superintendent shall be in writing on an evaluation form and become a part of the official personnel record.

(j) All observations shall include documentation of information to be used in determining the performance of the evaluatee.

(k) The evaluation system shall provide an opportunity for a

written response by the evaluatee and the response shall become a part of the official personnel record.

(l) A copy of the evaluation shall be provided to the evaluatee.

Section 5. (1) [~~The evaluation procedures and forms shall be designed to foster professional growth and to support individual personnel decisions.~~

~~(2)~~] The evaluation forms shall include a list of performance criteria characteristic of effective teaching or administrative practices. The performance criteria shall include the following:

(a) Performs professional responsibilities and duties as outlined in the job description including regular attendance and punctuality;

(b) Demonstrates effective classroom or staff management skills;

(c) Uses appropriate research-based instructional strategies and processes effectively;

(d) Demonstrates effective interpersonal, communication, and collaboration skills among peers, subordinates, students and parents;

(e) Demonstrates knowledge of subject matter or administrative techniques;

(f) Plans, implements, and evaluates instructional or administrative activities. Under each criterion, specific descriptors or indicators that can be measured and recorded shall be listed. In addition, standards of performance shall be established for each criterion;

(g) Teaches in a manner that is [~~Teaching~~] consistent with missions to which school/councils, district boards of education, and the State Board for Elementary and Secondary Education are committed.

(2) [~~(3)~~] All certified school personnel shall be made aware no later than the end of the first month of reporting for employment for each school year [~~annually~~] of the criteria on which they are to be evaluated [~~at the beginning of the evaluation period~~].

(3) [~~(4)~~] Evaluation forms or instruments shall be specific for each position or job category. Other forms for observation and pre- and postconferences may be used at the discretion of the local district.

Section 6. (1) All primary evaluators, with the exception of district board of education members, shall be trained, tested, and certified.

(2) Training shall:

(a) Include skill development in the use of the local evaluation process. Each local district shall conduct this training;

(b) Include skill development in the identification of effective teaching and management practices, effective observation and conferencing techniques, establishing and assisting with certified employee professional growth plans, and summative evaluation techniques relative to the learner [~~valued~~] outcomes. This training shall be conducted by providers who have been approved by the State Board for Elementary and Secondary Education as trainers for the Instructional Leadership Improvement Program;

(c) Be provided by the Kentucky Department of Education [~~State Board for Elementary and Secondary Education~~] for all new administrators who are designated as evaluators. Other administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may participate also; and

(d) Be approved as a part of the evaluation plan and procedures submitted to the State Board for Elementary and Secondary Education.

(3) Testing shall:

(a) Include a cognitive test of research-based and professionally accepted teaching and management practices and effective evaluation techniques listed in subsection (2)(b) of this section; and

(b) Be conducted by [~~the State Board for Elementary and Secondary Education or~~] agencies approved by the State Department of Education.

(4) Initial certification as an evaluator shall be issued by the Kentucky Department of Education [~~State Board for Elementary and Secondary Education~~] upon completion of the required evaluation training program and successful completion of testing.

(5)(a) Continued certification as an evaluator shall be contingent upon the completion of a minimum twelve (12) hours of evaluation training every two (2) years beginning July 1, 1988.

(b) This training shall be in any one, or a combination,-of the following skill areas:

1. Use of the local evaluation process;
2. Identification of effective teaching and management practices;
3. Effective observation and conferencing techniques;
4. Establishing and assisting with certified employee professional growth plans; or
5. Summative evaluation techniques.

(6) Each local district shall designate a contact person responsible for monitoring evaluation training and implementing the evaluation plan.

Section 7. For appeals to the local evaluation appeals panel, each local evaluation plan shall provide for the following:

(1) Right to a hearing as to every appeal; and

(2) Opportunity reasonably in advance of the hearing for the evaluator and evaluatee to adequately review all documents that are to be presented to the evaluation appeals panel; and

(3) Right to presence of evaluatee's chosen representative.

Section 8. (1) The local board of education shall annually review the evaluation plan to ensure compliance with KRS 156.101 and these administrative regulations.

(2) If substantive changes are made to the evaluation plan, the local board of education shall utilize the evaluation committee, as provided for in Section 4 of this administrative regulation, in formulating the revisions.

(3) Examples of substantive change include:

(a) Change in cycle;

(b) Observation frequency;

(c) Forms; and

(d) Appeals procedures.

(4) Revisions to the plan shall be reviewed and approved by the local board of education and submitted to the State Board for Elementary and Secondary Education for approval.

Section 9. (1) Any certified employee who feels that the local district is not properly implementing the evaluation plan according to the way it was approved by the State Board for Elementary and Secondary Education shall have the opportunity to appeal to the State Board for Elementary and Secondary Education.

(2) The appeal procedures shall be as follows:

(a) The State Board for Elementary and Secondary Education shall appoint a committee of three (3) state board members to serve on the State Evaluation Appeals Panel. [~~The panel shall have no jurisdiction relative to complaints involving the professional judgmental conclusions of evaluations and~~] Its jurisdiction shall be limited to procedural matters already addressed by the local appeals panel required by KRS 156.101(10). The panel shall have no jurisdiction relative to complaints involving the professional judgmental conclusions of evaluations.

(b) The certified employee shall submit a written request to the chief state school officer for a hearing before the State Evaluation Appeals Panel. A specific description of the complaint and grounds for appeal shall be submitted with this request.

(c) The State Evaluation Appeals Panel, or the Department of Education at its direction shall review the complaint and investigate to determine if a hearing should be granted.

(d) If a hearing is granted, all involved parties shall have an opportunity to speak before the appeals panel.

(e) Any briefs, written statements, and other documents which a party wants considered by the State Evaluation Appeals Panel shall be filed with the panel and served on the opposing party at least ten (10) days prior to the scheduled hearing.

(f) A decision of the appeals panel shall be rendered within fifteen (15) working days after a hearing.

(g) A determination of noncompliance shall render the evaluation void, and the employee shall have the right to be reevaluated.

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: September 14, 1993

FILED WITH LRC: September 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 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 October 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 Kevin M. Noland, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Audrey Carr

(1) Type and number of entities affected: All certified personnel in state education.

(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: Required to keep on file record of maintenance of evaluator status (12 hours every two years).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Costs incurred to contract providers to train and certify evaluators ($15,000/year).

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Required to keep on file: LEA certified personnel evaluation plan record of evaluator certification.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: 1) State conduct initial training and certification; rejected due to lack of resources. 2) State conduct continuing training; rejected due to lack of resources.

(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 Technical Education
(Proposed Amendment)

780 KAR 3:070. Attendance, compensatory time, and leave.

RELATES TO: KRS 151B.035, Chapter 337, 29 USC 201-219

STATUTORY AUTHORITY: KRS 151B.035

NECESSITY AND FUNCTION: KRS 151B.035 requires the State Board for Adult and Technical Education to promulgate comprehensive administrative regulations with the provisions of KRS 151B.035. KRS 151B.035 specifies that the state board promulgate comprehensive regulations for the certified and equivalent staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family and medical leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The normal work day for school-based employees shall coincide with the appropriate school schedule as recommended by the principal and approved by the regional executive director of the respective school operation.

(3) The appointing authority may require employees to work hours and work days other than normal including but not limited to inclement weather schedules if it is in the best interest of the agency.

(4) Employees who work within schools, regions, or divisions which require more than one (1) shift or seven (7) days a week operation may be assigned from one (10) shift to another and from one (1) post to another or alternate days to meet staffing requirements, or to maintain or provide essential services of the agency, or to meet scheduling needs of students. Employees shall be given as much advance notice as possible when schedules are changed. The employee is required to give reasonable notice in advance of absence from a work station.

Section 2. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour for hour basis. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Compensatory time shall be granted for those working in full-time positions only and who perform duties and responsibilities pertaining only to this full-time position.

(3) Upon separation from state service, employees shall be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(4) Any school-based employee who has accumulated compensatory leave shall be permitted to take time off during the following times:

(a) Spring break.

(b) Christmas break except on the four (4) official holidays normally given to state employees.

(5) All certified and equivalent employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(6) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. Annual Leave. (1) Full-time employees in the certified and equivalent personnel system except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work. A teacher employed to teach ten and one-half (10 1/2) months shall only accrue leave during the actual school term, unless he is approved to work extended employment.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been reinstated and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from a violation of KRS 151B.090. Only those months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum accumulation of annual leave and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that authorized for these purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(6) Taking annual leave.

(a) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

(b) School-based employees shall take time off during the following times:

1. Spring break.

2. Christmas break except on the four (4) official holidays normally given to state employees.

(c) In cases of emergency, the supervisor may request an employee to work during the above times without loss of annual leave.

(7) Employees are charged with annual leave for absence only on days they would otherwise work and receive pay or on designated school closure days.

(8) Employees shall be allowed up to two (2) professional leave days for the purpose of continuing staff development or participation in professional organization workshops and meetings without loss of pay.

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

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) Lump sum payment for accumulated annual leave.

(a) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in subsection (5) of this section when separated by proper resignation or retirement.

(b) In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave.

(c) An employee in the unclassified service who reverts to the classified service or an employee who resigns one day and is employed the next day shall retain his accumulated leave.

(d) The effective date of the separation shall be the last work day.

(14) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual leave not to exceed the maximum amounts set forth in subsection (4) of this section.

(15) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(16) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. Sick Leave. (1) Employees in the certified and equivalent personnel system, except emergency, per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used.

2. Only those months for which the employee earned sick leave shall be counted in computing total months of service.

3. The total service must be verified before the leave is credited to the employee's record.

(b) Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where dismissal resulted from the violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay, with the exception of educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay when an employee:

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

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements attesting to the continued inability to perform his duties.

(c) When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no position available, the statutes pertaining to layoff apply.

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

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provision of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) The Department for Adult and Technical Education shall continue to pay the state's contribution toward health and life insurance benefits between June 15 and August 1 for employees whose normal work year consists of ten and one-half (10 1/2) months.

(e) Any employee who leaves the certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply

supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 5. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similar relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee incapable of performing the essential duties of his job.

(d) "Medical emergency" means an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty on leave with or without pay for ten (10) or more consecutive working days.

[~~(15) An employee may donate or receive sick leave donation under the following conditions:~~]

(2) [~~(a)~~] An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

(3) [~~1.~~] Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the Commissioner and shall include:

(a) [~~a.~~] The name of the donor.

(b) [~~b.~~] The agency or office in which the donor is employed.

(c) [~~c.~~] The position number of the donor.

(d) [~~d.~~] The social security number of the donor.

(e) [~~e.~~] The name of the employee to which leave is being donated.

(f) [~~f.~~] The agency or office in which the donee is employed.

(g) [~~g.~~] The donee position number.

(h) [~~h.~~] The donee Social Security Number.

(i) [~~i.~~] The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

(j) [~~j.~~] Certification by the donor that this donation is given without expectation or promise for any purpose other than that authorized by this regulation.

(4) [~~2.~~] The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(5) [~~3.~~] A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(6) [~~(b)~~] An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

(7) [~~1.~~] Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

(a) [~~a.~~] Employee name.

(b) [~~b.~~] Position number.

(c) [~~c.~~] Social Security number.

(d) [~~d.~~] Employee title.

(e) [~~e.~~] The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

(f) [~~f.~~] Signature of the requestor or his personal representative.

(8) [~~2.~~] The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(9) [~~(c)~~] The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(10) [~~(d)~~] At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(11) [~~(e)~~] No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(12) [~~(f)~~] No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

[~~(g) For purposes of this regulation, medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.~~]

(13) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(14) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(15) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(16) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(17) Donated sick leave shall be used on consecutive days except as provided by Section 4(7)(e) of this administrative regulation. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(18) When the recipient of donated leave returns to work, resigns, retires, or otherwise terminates from state employment, unused donated leave shall be restored to the donors, in chronological order of receipt of the donation forms, unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(19) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(20) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(21) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 6. Family and Medical Leave. (1) Definitions.

(a) "Child", son or daughter, means a biological, adopted, or foster child (under an agreement with a state government agency), a stepchild, a legal ward, or a child of a person standing in loco

parentis who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

(b) "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the United States Secretary of Labor to be capable of providing health care services.

(c) "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(d) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(e) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

(2) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family and medical leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family and medical leave without pay. Unused family and medical leave shall not be carried over from year to year.

(3) Calculating a week of family and medical leave.

(a) A week of family and medical leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family and medical leave shall be used for calculating the employee's normal work week.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family and medical leave), the hours worked under the new schedule shall be used for calculating the employee's normal workweek.

(4) The appointing authority shall grant family and medical leave upon the receipt of a completed application from an employee. The appointing authority shall require the employee to use accumulated sick, annual and compensatory leave prior to granting unpaid family and medical leave, except that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family and medical leave shall be reduced by the amount of paid or unpaid leave used. A completed application consists of the request form and the medical certification required by subsection (6) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable.

(5) Family and medical leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child. The appointing authority shall require a couple in the employ of the same agency to limit the total amount of family and medical leave to twelve (12) weeks where leave is sought in connection with the birth, adoption, or placement of a foster child or to care for a sick parent;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, or child if the spouse, parent, or child has a serious health condition.

(d) Because of a serious health condition of the employee that makes the employee unable to perform the essential functions of his position.

(6) Certification requirements.

(a) The appointing authority shall require an employee granted family and medical leave for a serious health condition of the employee or child, spouse or parent to supply a certification, on a form prescribed by the cabinet secretary, from a health care provider that includes a statement that the employee is needed to care for a child, spouse, or parent in order to assist in their recovery.

(b) An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or child, spouse, or parent shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave.

(c) If the appointing authority has reason to doubt the validity of a medical certification, the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(d) If the opinions of the employee and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider.

(e) The appointing authority may require recertification of the need for family and medical leave every thirty (30) working days and a report on the status and intention of the employee to return to work.

(7) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill child, parent, or spouse or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or shall have been on family and medical leave during the previous month subject to the following conditions:

(a) Work days and paid leave and family and medical leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall use his paid leave days consecutively;

(c) An employee who has exhausted paid leave and family and medical leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(d) An employee who uses family and medical leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family and medical leave is exhausted shall reimburse the agency for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the agency if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family and medical

leave under this regulation.

2. Other circumstances beyond the employee's control. These circumstances include but are not limited to when a parent, spouse, or child has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care; or a parent's decision not to return to work to stay with a newborn child.

(e) An employee on family and medical leave shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(9) At the conclusion of the family and medical leave, an employee shall be restored to the same position that the employee held before going on leave, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Section 7. [~~6.~~] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [~~plaintiff~~]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 8. [~~6.~~] Military Leave: Training Duty and Military Duty. (1) Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of his regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and this absence shall not be charged to leave.

(a) Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave with out pay.

(b) 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 duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 9. [~~7.~~] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 10. [~~8.~~] Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed to be in the best interest of the state. All employees granted this leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The Commissioner of Adult and Technical Education may grant a sabbatical leave of absence without pay when requested by a continuing status employee for a period not to exceed twelve (12) months for attendance at a college, university, vocational, business school or any other business and industrial training program for the purpose of retraining due to changing technology. If retraining occurs at a Kentucky Technical institution, the employee shall be exempt from tuition. Employees granted this leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave, or if there is no similar position available, the first opening for a similar position for which the employee is qualified. Employees shall not be guaranteed the identical position held at the time of beginning leave.

(5) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing by the appointing authority that he is being placed on leave without pay and of the reasons therefor. If the investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B, shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits

for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the Department for Adult and Technical Education certified and equivalent personnel system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 11. [9.] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of absence. Absence without leave may constitute grounds for disciplinary action.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: August 26, 1993

FILED WITH LRC: September 9, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 26, 1993 at 10 a.m. (EST) 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 October 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Tara H. Parker, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, KY 40601, Phone: 502/564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All certified and equivalent employees of the KRS Chapter 151B personnel system, approximately 3,279.

(a) Direct and indirect costs or savings to those affected: None. There is no monetary cost or savings to employees eligible for family and medical leave. The sick leave sharing regulation is strictly voluntary and could cost the employee the value of any sick leave donated.

(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: Increased reporting and paperwork for employees who use sick leave sharing or family and medical leave.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: See below.

(1) First year: Costs attendant to provisions of substitute teachers for vocational-technical teachers on family and medical leave.

(2) Continuing costs or savings: Same as first year.

(3) Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some increase required to certify leave, communicate with employees, and track use of leave.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternates are available.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(6) Any additional information or comments:

TIERING: Was tiering applied: No. The federal Family and Medical Leave Act and the state statute and regulations governing sick leave sharing require uniformity and, therefore, prohibit tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825.

2. State compliance standards. This administrative regulation provides guidelines and procedures for taking twelve (12) weeks leave for family and medical purposes and provides for job reinstatement at the end of the leave and no loss of benefits as a result of taking this leave.

3. Minimum or uniform standards contained in the federal mandate. The federal law provides that employers, including public agencies, of over 50 employees will make provisions for paid or unpaid leave of at least 12 weeks for employees who need to be off work to take care of a new baby, or a child, spouse or parent, or for a serious, personal health condition. The federal mandate provides options for notice requirements, scheduling of foreseeable medical treatment, temporary transfer of positions, options for certification by the health care provider, substitution of paid leave, aggregate leave for spouses, restoration to position without loss of benefits, exemption of certain highly paid employees, special options for instructors in secondary schools, and federal remedies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter, additional or different responsibilities or requirements than the federal mandate. The federal law provides options. This administrative regulation adopts the options for unpaid leave, concurrent use (or substituted use) of paid leave accrued, aggregation of spousal leave, time limitations of one-year for new born or adoption or child placement leave, reasonable notice, transfer of equivalent position for intermittent leave, certification for family and intermittent leave, second and third opinions in cases of doubt, recertification, benefits protection, and job restoration rules. This regulation does not address the options of scheduling requirements for foreseeable leave, the requirement of employer agreement before intermittent leave may be taken for new-born care, exemption for certain highly paid employees, or additional requirement options for instructional personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The foreseeable difficulty administering the federal options not addressed in this regulation is believed to outweigh the increased control benefits for the agency employer in awarding family and medical leave.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Proposed Amendment)

780 KAR 6:060. Attendance, compensatory time, and leave.

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 comprehen-

sive administrative regulations consistent with the provisions of KRS 151B.035. KRS 151B.035 specified that the state board promulgate administrative regulations for the unclassified service staff governing attendance, including hours of work, compensatory time, and annual, court, military, sick, voting, and special leave of absence. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family and medical leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Attendance. (1) Full-time employees shall be required to work thirty-seven and one-half (37 1/2) hours per week for all positions unless otherwise specified by the appointing authority.

(2) The appointing authority may require employees to work hours and work days other than normal if it is in the best interest of the agency. The employee shall be required to give reasonable notice in advance of absence from a work station. Employees shall be given as much advance notice as possible when schedules are changed.

Section 2. Compensatory Time. (1) An employee who is requested in advance to work in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis subject to the provisions of the Fair Labor Standards Act and the Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-half (1/2) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) Upon separation from state service, employees will be paid for all unused compensatory leave at the greater of their regular hourly rate of pay or at the average rate of pay for the final three (3) years of employment.

(3) All unclassified employees shall be permitted to use accumulated compensatory time when practicable and requested in advance and if approved by the respective supervisor.

(4) To maintain a manageable level of accumulated compensatory leave and for the specific purpose of reducing an employee's compensatory leave, the commissioner or designee may direct an employee to take accumulated compensatory time off from work.

Section 3. Annual Leave. (1) Full-time employees in the unclassified service except seasonal, temporary, per diem, emergency and part-time employees shall accumulate annual leave with pay at the following rate:

Months of Service	Annual Leave Days
0-59 months	1 leave day per month; 12 per year
60-119 months	1 1/4 leave days per month; 15 per year
120-179 months	1 1/2 leave days per month; 18 per year
180 months and over	1 3/4 leave days per month; 21 per year

(2) Annual leave shall be accumulated only in the months in which the employee is hired to work.

(3) Computing annual leave.

(a) A full-time employee must have worked more than half of the work days in a month to qualify for annual leave.

(b) Leave shall be credited on the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted.

(c) Former employees who have been rehired and who have been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from a violation of KRS Chapter 151B, Section 16. Only those months for which the employee earned annual leave shall be counted in computing months of total service.

(4) The maximum accumulated annual leave which may carry forward from one (1) fiscal year to the next shall not exceed the following amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) work days
60-119 months	Thirty-seven (37) work days
120-179 months	Forty-five (45) work days
180-239 months	Fifty-two (52) work days;
240 months and over	Sixty (60) work days

Leave in excess of the above maximum amounts shall be converted to sick leave at the end of the fiscal year or upon retirement. Months of service for the purpose of determining the maximum amount of annual leave which may be accumulated and the amount to be converted to sick leave shall be computed as provided in subsections (1), (2), and (3) of this section. Annual leave shall not be granted in excess of that earned prior to starting date of leave.

(5) Absence due to sickness, injury, or disability in excess of that hereinafter authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority be charged against annual leave.

(6) Accumulated leave shall be granted by the appointing authority in accordance with operating requirements and, insofar as practicable, with the request of employees. An employee who makes a timely request for annual leave shall be granted annual leave by the appointing authority, during the calendar year, up to at least the amount of time he earned that year.

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

(8) Employees shall be allowed sufficient leave days as determined by the commissioner for the purpose of continuing staff development; i.e., participation in professional organization workshops and meetings without loss of pay.

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

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated leave.

(11) Before an employee may be placed on leave of absence without pay in excess of thirty (30) working days, he must have used or have been paid for any accumulated annual leave and compensatory leave unless he has requested to retain up to ten (10) days of accumulated annual leave.

(12) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month.

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he worked for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the fifteenth day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(13) An employee who has been dismissed for cause or who has failed to give proper notice of resignation may, at the discretion of the appointing authority, be paid in a lump sum for accumulated annual

leave not to exceed the maximum amounts set forth in subsection (5) of this section.

(14) Upon the death of an employee, his estate shall be entitled to receive pay for the unused portion of the employee's accumulated annual leave.

(15) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-half (1/2) hour.

Section 4. Sick Leave. (1) Employee in the unclassified system, except per diem, and part-time employees shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. An employee must have worked more than half of the workdays in a month to qualify for sick leave with pay. Each employee shall be credited with additional sick leave on the first day of the month following the month in which the sick leave is earned.

(2) Sick leave credits: full-time and former employees.

(a) Full-time employees completing 120 months of total service with the state shall be credited with ten (10) additional days of sick leave upon the first day of the month following the completion of 120 months of service.

1. In computing months of total service for the purpose of crediting ten (10) additional days of sick leave, only those months for which an employee earned sick leave shall be used.

2. Only those months for which the employee earned sick leave shall be counted in computing total months of service.

3. The total service must be verified before the leave is credited to the employee's record.

(b) Former employees who have been rehired and who had been previously dismissed for cause from state service shall receive credit for service prior to the dismissal, except where such dismissal resulted from the violation of KRS 151B.090.

(3) Unused sick leave may be accumulated with no maximum on accumulation.

(4) Sick leave shall accrue only when an employee is working or on authorized leave with pay. Sick leave shall not accrue when an employee is on educational leave with pay.

(5) The appointing authority shall grant accrued sick leave with pay when an employee:

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

(b) Is disabled by sickness, injury, or pregnancy. The appointing authority may require a doctor's statement attesting to the inability to perform his duties;

(c) Is required to care for a sick or injured member of his immediate family for a reasonable period of time. The appointing authority may require a doctor's statement; supporting the need for care by the employee;

(d) Would jeopardize the health of others at his duty post because of exposure to a readily transmittable contagious disease; or

(e) Has lost by death a spouse, or a parent, child, brother or sister, or the spouse of any of them, or any persons related by blood or affinity with a similarly close association. Leave under this paragraph is limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(6) At the termination of sick leave with pay not exceeding six (6) months, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit.

(7) Continuous leave limitation, doctor's statements, availability of position on return, dismissal after one (1) year, and sick leave without pay.

(a) The appointing authority shall grant sick leave without pay for so long as an employee is disabled by sickness, or illness, or pregnancy, and the total continuous leave does not exceed one (1) year.

(b) The appointing authority may require periodic doctor's statements attesting to the continued inability to perform his duties.

(c) When the employee has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit; if there is no such position available, the regulations pertaining to layoff apply.

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

(e) An employee granted sick leave without pay may, upon request, retain up to ten (10) days of accumulated sick leave.

(8) Employees eligible for state contributions for life insurance and health benefits under the provision of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for these benefits.

(d) Any employee who leaves the unclassified service on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

(9) Absence for a fraction or a part of a day that is chargeable to sick leave shall be charged in hours or increments of one-half (1/2) hour.

(10) An employee who is transferred to the Department for Adult and Technical Education shall retain his accumulated sick leave.

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay in excess of thirty (30) working days. Former employees who are reemployed shall have unused sick leave balances revived upon reentrance and placed to their credit.

(12) In cases of absence due to illness or injury for which workers' compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers' compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. The employee's sick leave shall be immediately reinstated to the extent that workers' compensation benefits were assigned.

(13) Application for sick leave. An employee shall file a written application for sick leave with or without pay within a reasonable time. Except in cases of emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examination, and for sick leave without pay. In all cases of illness, an employee is obligated to notify his immediate supervisor or other designated person. Failure to do so in a reasonable period of time may be cause for denial of sick leave for the period of absence.

(14) Supporting evidence.

(a) The appointing authority may require an employee to supply supporting evidence in order to receive sick leave. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required, signed by a licensed practitioner and certifying to the incapacity, examination, or treatment. The appointing authority shall

grant sick leave when the application is supported by acceptable evidence.

(b) The appointing authority may place on sick leave an employee whose health might be jeopardized by job duties, whose health might jeopardize others, or whose health prevents performance of duties and responsibilities, and who, on request, fails to produce a satisfactory medical certificate.

Section 5. Sick Leave Sharing Procedures. (1) Definitions.

(a) "Employee" means an employee in active payroll status. An employee who has resigned or retired or who has been placed in unpaid leave status by a personnel action shall not qualify to donate or receive sick leave under the Sick Leave Sharing Program.

(b) "Immediate family" means the spouse, mother, father, son or daughter, or person of similar relationship who has resided with the employee for not less than thirty (30) days prior to application.

(c) "Medically certified illness, injury, impairment or physical or mental condition" means a disabling medical condition which renders the employee incapable of performing the essential duties of his job.

(d) "Medical emergency" means an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty on leave with or without pay for ten (10) or more consecutive working days.

[~~(15) An employee may donate or receive sick leave donation under the following conditions:~~]

(2) [~~(a)~~] An employee with a sick leave balance in excess of seventy-five (75) hours may donate any or all of this excess to an employee with a documented medical emergency who has exhausted all annual leave, sick leave, and compensatory leave.

(3) [~~1.~~] Voluntary donation of excess sick leave shall be subject to the approval of and made on a form prescribed by the commissioner and shall include:

(a) [~~a.~~] The name of the donor.

(b) [~~b.~~] The agency or office in which the donor is employed.

(c) [~~c.~~] The position number of the donor.

(d) [~~d.~~] The Social Security number of the donor.

(e) [~~e.~~] The name of the employee to which leave is being donated.

(f) [~~f.~~] The agency or office in which the donee is employed.

(g) [~~g.~~] The donee position number.

(h) [~~h.~~] The donee Social Security number.

(i) [~~i.~~] The maximum amount of the donor's leave in excess of seventy-five (75) hours which may be credited to the individual donee.

(j) [~~j.~~] Certification by the donor that such donation is given without expectation or promise for any purpose other than that authorized by this regulation.

(4) [~~2.~~] The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(5) [~~3.~~] A donating employee shall not sell, offer to sell, bargain, exchange, transfer, or assign accumulated sick leave for any consideration or in any manner other than that authorized by this regulation.

(6) [~~(b)~~] An employee with a medical emergency who has exhausted all annual leave, sick leave, and compensatory leave may make application to receive donation of sick leave from an employee (or employees) with a sick leave balance in excess of seventy-five (75) hours. Application may be made on behalf of the employee by a personal representative of the employee in the event of the employee's incapacity to make application on his own behalf.

(7) [~~1.~~] Application shall be made to the appointing authority on a form prescribed by the commissioner and shall include:

(a) [~~a.~~] Employee name.

(b) [~~b.~~] Position number.

(c) [~~c.~~] Social Security number.

(d) [~~d.~~] Employee title.

(e) [~~e.~~] The reason transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency.

(f) [~~f.~~] Signature of the requestor or his personal representative.

(8) [~~2.~~] The application shall be accompanied by certification by one (1) or more physicians of the medical reasons that the employee will be unable to perform the duties and responsibilities of this position for ten (10) or more consecutive working days.

(9) [~~(c)~~] The appointing authority may require additional medical evidence prior to approval or denial of acceptance of sick leave donation. An employee may request an extension of approved, donated sick leave by presenting additional medical evidence to the appointing authority.

(10) [~~(d)~~] At the end of each pay period while an employee is on donated leave, the appointing authority shall credit that employee's sick leave balance with the number of hours which would otherwise be considered leave without pay and shall reduce the donor's leave balance by that amount.

(11) [~~(e)~~] No employee on donated sick leave shall be credited with leave in an amount in excess of the time of the documented medical emergency.

(12) [~~(f)~~] No person shall through his office of employment use any promise, exchange, or influence to require an employee to donate excess sick leave or annual leave to any other employee.

[~~(g) For purposes of this regulation, medical emergency shall mean an illness or injury of the employee or the employee's immediate family which will require the employee's absence from duty for ten (10) or more consecutive working days.~~]

(13) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(14) Where multiple donors donate sick leave to an eligible recipient, agencies shall transfer leave in chronological order of receipt of the donation forms, up to the maximum amount that has been certified to be needed by the recipient.

(15) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be used retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(16) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(17) Donated sick leave shall be used on consecutive days except as provided by Section 4(7)(e) of this administrative regulation. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(18) When the recipient of donated leave returns to work, resigns, retires, or otherwise terminates from state employment, unused donated leave shall be restored to the donors, in chronological order of receipt of the donation forms, unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(19) If a sick leave donor resigns, retires or is otherwise terminated from state employment before the process of transferring leave to the recipient has begun, such leave shall not be available for use by the recipient.

(20) An appointing authority may require a sick leave recipient to provide an updated medical certificate attesting to the continued need for leave after thirty (30) working days of sick leave.

(21) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

Section 6. Family and Medical Leave. (1) Definitions.

(a) "Child", son or daughter, means a biological, adopted, or foster child (under an agreement with a state government agency), a stepchild, a legal ward, or a child of a person standing in loco parentis who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

(b) "Health care provider" means a doctor of medicine or

osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the United States Secretary of Labor to be capable of providing health care services.

(c) "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(d) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(e) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.

(2) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family and medical leave without pay. On the first day of January of each year thereafter every employee in state service who has completed twelve (12) months of service and has worked at least 1,250 hours during the preceding calendar year shall qualify for twelve (12) weeks of family and medical leave without pay. Unused family and medical leave shall not be carried over from year to year.

(3) Calculating a week of family and medical leave.

(a) A week of family and medical leave is the amount of time an employee normally works each week.

(b) If an employee's schedule varies from week to week, a weekly average of the hours worked over the twelve (12) weeks prior to the beginning of the family and medical leave shall be used for calculating the employee's normal workweek.

(c) If there has been a permanent or long-term change in the employee's schedule (for reasons other than family and medical leave), the hours worked under the new schedule shall be used for calculating the employee's normal workweek.

(4) The appointing authority shall grant family and medical leave upon the receipt of a completed application from an employee. The appointing authority shall require the employee to use accumulated sick, annual and compensatory leave prior to granting unpaid family and medical leave, except that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family and medical leave shall be reduced by the amount of paid or unpaid leave used. A completed application consists of the request form and the medical certification required by subsection (6) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable.

(5) Family and medical leave shall be granted:

(a) For the birth of a child of the employee, adoption by the employee of a child, or placement with the employee of a foster child. The appointing authority shall require a couple in the employ of the same agency to limit the total amount of family and medical leave to twelve (12) weeks where leave is sought in connection with the birth, adoption, or placement of a foster child or to care for a sick parent;

(b) Within one (1) year of the birth of a child of the employee, adoption by the employee or placement with the employee of a foster child, for the care of such newborn, adopted, or foster child;

(c) To an employee to care for the employee's spouse, parent, or child if the spouse, parent, or child has a serious health condition.

(d) Because of a serious health condition of the employee that makes the employee unable to perform the essential functions of his position.

(6) Certification requirements.

(a) The appointing authority shall require an employee granted family and medical leave for a serious health condition of the employee, or child, spouse, or parent, to supply a certification, on a form prescribed by the cabinet secretary, from a health care provider that includes a statement that the employee is needed to care for a child, spouse, or parent in order to assist in their recovery.

(b) An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or child, spouse, or parent shall be required to supply a certification from a licensed health care provider that such leave is medically necessary and the expected duration and schedule of such leave.

(c) If the appointing authority has reason to doubt the validity of a medical certification, the appointing authority may require the employee to obtain a second opinion at the agency's expense. The appointing authority shall designate the health care provider to furnish the second opinion. The designated health care provider shall not be employed on a regular basis by the agency.

(d) If the opinions of the employee and the designated health care provider differ, the appointing authority may request the employee to obtain certification from a third health care provider who is approved by the employee. This third opinion shall be final and binding. If the appointing authority does not act in good faith to attempt to reach an agreement on the third health care provider, the appointing authority shall be bound by the original certification. If the employee does not act in good faith to attempt to reach an agreement on the third health care provider, the employee shall be bound by the opinion of the second health care provider.

(e) The appointing authority may require recertification of the need for family and medical leave every thirty (30) working days and a report on the status and intention of the employee to return to work.

(7) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill child, parent, or spouse or for the employee's own serious health condition, and the need for leave is reasonably based on planned medical treatment, the appointing authority may temporarily reassign the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

(8) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave or shall have been on family and medical leave during the previous month subject to the following conditions:

(a) Work days and paid leave and family and medical leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contribution for life insurance and health benefits, he shall use his paid leave days consecutively;

(c) An employee who has exhausted paid leave and family and medical leave shall not qualify for state contribution for life insurance and health benefits unless he works for more than half of the work days in a month. If the employee is unable to work for more than half of the work days in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contribution and the employee contributions for such benefits.

(d) An employee who uses family and medical leave as the sole qualification for the state contribution for life insurance and health benefits who fails to return to work for thirty (30) calendar days after the family and medical leave is exhausted shall reimburse the agency for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the agency if the reason the employee does not return is due to:

1. The continuation, recurrence or onset of a serious health condition which would entitle the employee to family and medical leave under this regulation.

2. Other circumstances beyond the employee's control. These circumstances include but are not limited to when a parent, spouse, or child has a serious health condition and the employee is needed

to provide care; or the employee is laid off while on leave. Examples of circumstances which are not beyond the employee's control are where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a parent's decision not to return to work to stay with a newborn child.

(e) An employee on family and medical leave shall continue to be responsible for the employee's share of contributions for life insurance and health benefits. The contributions shall be due at the same time the contributions would be made if by payroll deduction. An employee shall be granted a thirty (30) calendar day grace period to make any employee contributions for life insurance and health benefits. If the employee does not make the contribution within the thirty (30) day grace period, the employee's life insurance and health benefits shall cease on the date the grace period ends. If the life insurance and health benefits cease as a result of nonpayment of premiums by the employee after the grace period, upon the employee's return to work for thirty (30) calendar days, the life insurance and health benefits shall be restored to the same level of coverages as were provided when the leave commenced, effective with the employee's return to work.

(9) At the conclusion of the family and medical leave, an employee shall be restored to the same position that the employee held before going on leave, or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Section 7. [~~5.~~] Court Leave. An employee shall be entitled to leave of absence from duties during his scheduled working hours, without loss of time or pay for that amount of time necessary to comply with subpoenas by any court, or administrative agency or body of the federal or state government or any political subdivision thereof, to serve as a juror or a witness except in cases where the employee himself or a member of his family is a party to the court or administrative proceeding [~~plaintiff~~]. This leave shall include necessary travel time. If relieved from duty as a juror or witness during his normal working hours, the employee shall return to work.

Section 8. [~~6.~~] Military Leave: Training Duty and Military Duty. (1) Any employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from his civil duties upon request therefor, to serve under orders on training duty without loss of regular compensation for a period not to exceed ten (10) working days in any one (1) calendar year, and any such absence shall not be charged to leave.

(a) Absence in excess of this amount will be charged as annual leave, compensatory leave, or leave with out pay.

(b) 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 such duty not to exceed six (6) years. All accumulated annual and compensatory leave may be paid in a lump sum, at the request of the employee, upon receiving this leave.

Section 9. [~~7.~~] Voting Leave. All employees who are eligible and registered to vote shall be allowed, upon prior request, four (4) hours, for the purpose of voting. This absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 10. [~~8.~~] Special Leave of Absence. (1) In addition to leave as above provided, the appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) The Commissioner of Adult and Technical Education may grant leave of absence when requested by an employee for a period not to exceed twenty-four (24) months, with or without pay, for assignment to and attendance at college, university, vocational or business school for the purpose of training in subjects related to the work of the employee and which will benefit the state service. All employees granted such leave shall be guaranteed a position as similar as possible to the position held at the time of beginning of leave. Employees shall not be guaranteed the identical position held at time of beginning of leave.

(3) The appointing authority may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this regulation that are deemed to be in the best interest of the state. All employees granted such leave shall be guaranteed a position as similar as possible to this position held at the time of the beginning of leave. Employees shall not be guaranteed the identical position held at the time of leave.

(4) The appointing authority may place an employee on leave without pay for a period of time not to exceed sixty (60) working days pending an investigation into allegations of employee misconduct. Unless there is imminent danger to staff, students or other individuals, there shall be a preliminary hearing after which the employee shall be notified in writing that he is being placed on leave without pay and of the reasons therefor. If this investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of this leave, and all records relating to the investigation will be purged from the Department for Adult and Technical Education files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken including those cases where the employee voluntarily resigns in the interim.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 151B shall have worked or been on paid leave during the previous month subject to the following conditions:

(a) Any combination of workdays and paid leave used by the employee within a month shall entitle the employee to state-paid contributions for life insurance and health benefits in the following month;

(b) When an employee is unable to work and elects to use paid leave to qualify for state contributions for life insurance and health benefits, he shall utilize his paid leave days consecutively.

(c) An employee who has exhausted paid leave shall not qualify for state contributions for life insurance and health benefits unless he works for more than half of the workdays in a month. If the employee is unable to work for more than half of the workdays in a month, the employee may continue his group health and life insurance benefits for the following month by paying the total cost of the state contributions and any employee contributions for such benefits.

(d) Any employee who leaves the Department for Adult and Technical Education unclassified system on or prior to the 15th day of the month before working or being on paid leave for over half of the workdays in the month shall remain eligible for state contributions for life insurance and health benefits in the following month.

Section 11. [~~9.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made for each period of such absence. Such absence may constitute grounds for disciplinary action.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: August 26, 1993
FILED WITH LRC: September 9, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, October 26, 1993 at 10 a.m. (EST) 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 October 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Tara H. Parker, Secretary, State Board for Adult and Technical Education, 302 Capital Plaza Tower, Frankfort, KY 40601, Phone: 502/564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All unclassified employees of the KRS Chapter 151B personnel system, approximately 24.

(a) Direct and indirect costs or savings to those affected: None. There is no monetary cost or savings to employees eligible for family and medical leave. The sick leave sharing regulation is strictly voluntary and could cost the employee the value of any sick leave donated.

(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: Increased reporting and paperwork for employees who use sick leave sharing or family and medical leave.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: See below.

(1) First year: Costs attendant to provisions of substitute teachers for vocational-technical teachers on family and medical leave.

(2) Continuing costs or savings: Same as first year.

(3) Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some increase required to certify leave, communicate with employees, and track use of leave.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternates are available.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(6) Any additional information or comments:

TIERING: Was tiering applied: No. The federal Family and Medical Leave Act and the state statute and regulations governing sick leave sharing require uniformity and, therefore, prohibit tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825.

2. State compliance standards. This administrative regulation provides guidelines and procedures for taking twelve (12) weeks leave for family and medical purposes and provides for job reinstatement at the end of the leave and no loss of benefits as a result of taking this leave.

3. Minimum or uniform standards contained in the federal mandate. The federal law provides that employers, including public agencies, of over 50 employees will make provisions for paid or unpaid leave of at least 12 weeks for employees who need to be off work to take care of a new baby, or a child, spouse or parent, or for a serious, personal health condition. The federal mandate provides options for notice requirements, scheduling of foreseeable medical treatment, temporary transfer of positions, options for certification by the health care provider, substitution of paid leave, aggregate leave for spouses, restoration to position without loss of benefits, exemption of certain highly paid employees, special options for instructors in secondary schools, and federal remedies.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter, additional or different responsibilities or requirements than the federal mandate. The federal law provides options. This administrative regulation adopts the options for unpaid leave, concurrent use (or substituted use) of paid leave accrued, aggregation of spousal leave, time limitations of one-year for new born or adoption or child placement leave, reasonable notice, transfer of equivalent position for intermittent leave, certification for family and intermittent leave, second and third opinions in cases of doubt, recertification, benefits protection, and job restoration rules. This regulation does not address the options of scheduling requirements for foreseeable leave, the requirement of employer agreement before intermittent leave may be taken for new-born care, exemption for certain highly paid employees, or additional requirement options for instructional personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The foreseeable difficulty administering the federal options not addressed in this regulation is believed to outweigh the increased control benefits for the agency employer in awarding family and medical leave.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:020. Schedule II substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.060 to 218A.070, 21 CFR 1308.12 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.060, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Cabinet for Human Resources to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.060 [~~and applicable federal regulations~~], the Cabinet for Human Resources designates the substances set forth in this administrative regulation as Schedule II controlled substances.

Section 1. Depressants. Except as provided in subsection (5) of this section, the Cabinet for Human Resources [~~hereby~~] designates as Schedule II controlled substances in addition to those specified by KRS 218A.070 [~~and unless specifically excepted or listed in another schedule,~~] any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital; and

(4) Secobarbital.

(5) [~~Provided; however, that~~] Any suppository dosage form

containing amobarbital, secobarbital and pentobarbital or any of their salts [~~salt thereof~~] which has been approved by the United States Food and Drug Administration for marketing only as a suppository shall be in "Schedule III."

Section 2. Immediate Precursors. The Cabinet for Human Resources [~~hereby~~] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070 [~~and unless specifically excepted or listed in another schedule,~~] any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) 1-Phenylcyclohexylamine, immediate precursor to Phencyclidine;

(2) Phenylacetone (some trade or other names include: phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone, immediate precursors to amphetamine and methamphetamine);

(3) 1-Piperidinocyclohexanecarbonitrile, immediate precursor to Phencyclidine.

Section 3. Hallucinogenic Substances. The Cabinet for Human Resources [~~hereby~~] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070 [~~and unless specifically excepted or listed in another schedule,~~] and material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b, d] pyran-1-o1 or (-) delta-9-(trans)- tetrahydrocannabinol.)

(2) Nabilone. (Another name for nabilone: (plus or minus) - trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

Section 4. Opium and Derivatives. The Cabinet for Human Resources [~~hereby~~] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, any of the following opium and opiates, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

(1) Raw opium;
(2) Opium extracts;
(3) Opium fluid;
(4) Powdered opium;
(5) Granulated opium;
(6) Tincture of opium;
(7) Codeine;
(8) Ethylmorphine;
(9) Etorphine hydrochloride;
(10) Hydrocodone;
(11) Hydromorphone;
(12) Metopon;
(13) Morphine;
(14) Oxycodone;
(15) Oxymorphone;
(16) Thebaine;

Section 5. Opiates. The Cabinet for Human Resources [~~hereby~~] designates as Schedule II controlled substances, in addition to those specified by KRS 218A.070, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanil;
(2) Bulk dextropropoxyphene (nondosage forms);
(3) Carfentanil;
(4) Levo-alphacetylmethadol (LAAM); and
(5) Sufentanil.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 30, 1993
FILED WITH LRC: September 8, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by October 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews
(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.
(a) Direct and indirect costs or savings to those affected:
1. First year: There are no direct or indirect costs or savings to pharmacists because this administrative regulation updates the controlled substances listed in Schedule II.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Is tiering applied? No. Tiering was not applied because the list of substances in Schedule II applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 USC 801, and 21 CFR 1308.12.
2. State compliance standards. The criteria for substances in Schedule II are set forth in KRS 218A.060.
3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule II are set forth in 21 USC 812.
4. Will this administrative regulation impose stricter requirements,

or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:025. Schedule III substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.080 to 218A.090, 21 CFR 1308.13 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.080, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Cabinet for Human Resources to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.080, the Cabinet for Human Resources designates the substances set forth in this administrative regulation as Schedule III controlled substances. [~~KRS 218A.080 provides that the Cabinet for Human Resources shall place a substance in Schedule III under the Kentucky Controlled Substances Act if: (1) the substance has a potential for abuse less than the substances listed in Schedules I and II; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. The Cabinet for Human Resources hereby finds that the substances in this regulation meet this criteria.~~]

Section 1. Amphetamine and Methamphetamine Combination Products. The Cabinet for Human Resources [~~hereby~~] designates the following amphetamine and methamphetamine combination products as "Schedule III Controlled Substances" [~~and any other drug of the quantitative composition shown below or which is the same except that it contains a lesser quantity of controlled substances, to wit~~]:

(1) Mediatric; Tablet or capsule: Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg; and

(2) Mediatric Liquid; Solution (15 cc.): Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg.

Section 2. Stimulants. The Cabinet for Human Resources [~~hereby~~] designates as "Schedule III" controlled substances any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of such isomers if [~~whenever~~] the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Chlortermine; and
(4) Phendimetrazine.

Section 3. Depressants. The Cabinet for Human Resources [~~hereby~~] designates as "Schedule III" controlled substances the following:

(1) Any material, compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital, or any of their salts [~~salt thereof~~] and one (1) or more other active medicinal ingredients which is not a controlled substance.

(2) Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital, or any of their salts [~~salt thereof~~] which has been approved by the United States Food and Drug Administration for marketing only as a suppository.

(3) Tiletamine and zolazepam or any of their salts [~~salt thereof~~]. Trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-dizepin-7(1H)-one,flupyrazpon.

Section 4. Pentazocine Drug Products. The Cabinet for Human Resources [~~hereby~~] designates, in addition to the parenteral or injectable form of Pentazocine which is designated as a "Schedule III" controlled substance by KRS 218A.090(3), any [~~all other dosage forms of Pentazocine as "Schedule III" controlled substances. Any~~] material, compound, mixture, or preparation which contains any quantity of Pentazocine, including its salts[~~, is hereby designated as a "Schedule III" controlled substance~~].

Section 5. Anabolic Steroids. The Cabinet for Human Resources [~~hereby~~] designates as "Schedule III Controlled Substances", in addition to those listed in KRS 218.090(5), any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of such salts of isomers is possible within the specific chemical designation [~~or any isomer, ester, salt, or derivative thereof~~]:

(1) [~~Boldenone;~~
~~(2)~~] Chlorotestosterone;
(2) [~~(3)~~] Dihydrotestosterone; and
[~~(4) Drostanolone;~~
~~(5) Formebulone;~~]
(3) [~~(6)~~] Methandranone[~~;~~
~~(7) Methandriol;~~
~~(8) Mibolerone;~~
~~(9) Stanolone;~~
~~(10) Testolactone; and~~
~~(11) Trenbolone~~].

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 30, 1993
FILED WITH LRC: September 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by October 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to pharmacists because these amendments merely update the list of substances listed in Schedule III and incorporate the language requirements of KRS Chapter 13A.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency because the regulation conforms to existing federal regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because the list of substances in Schedule III applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 USC 801, and 21 CFR 1308.13.

2. State compliance standards. The criteria for substances in Schedule III are set forth in KRS 218A.080.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule III are set forth in 21 USC 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.100 to 218A.110, 21 CFR 1308.14 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.100, 218A.250

NECESSITY AND FUNCTION: KRS 218A.100 authorizes the Cabinet for Human Resources to place a substance in Schedule IV if it finds that: (1) the substance has a low potential for abuse relative to substances in Schedule III; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. In addition, KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice thereof is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Human Resources, after considering such criteria, hereby designates the substances set forth in this administrative regulation as Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Human Resources hereby designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers (whether optical position or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(1) Cathine ((+)-norpseudoephedrine);
(2) Diethylpropion;
(3) Fencamfamin;
(4) Fenfluramine;
(5) Fenproporex;
(6) Mazindol;
(7) Mefenorex;
(8) Pemoline (including organometallic complexes and chelates);
(9) Phentermine;
(10) Pipradrol; and
(11) SPA ((-)-1-dimethylamino-1,2-diphenyl ethane).

Section 2. Depressants. The Cabinet for Human Resources hereby designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam;
(2) Bromazepam;
(3) Camazepam;
(4) Chlordiazepoxide;
(5) Clobazam;
(6) Clonazepam;
(7) Clorazepate;
(8) Clotiazepam;
(9) Cloxazolam;
(10) Delorazepam;
(11) Diazepam;
(12) Estazolam;
(13) Ethyl loflazepate;
(14) Fludiazepam;
(15) Flunitrazepam;
(16) Flurazepam;
(17) Halazepam;
(18) Haloxazolam;
(19) Ketazolam;
(20) Loprazolam;
(21) Lorazepam;
(22) Lormetazepam;
(23) Mebutamate;
(24) Medazepam;
(25) Methohexital;
(26) Midazolam;
(27) Nimetazepam;
(28) Nitrazepam;
(29) Nordiazepam;
(30) Oxazepam;
(31) Oxazolam;
(32) Pinazepam;
(33) Prazepam;
(34) Quazepam;
(35) Temazepam;
(36) Tetrazepam; [~~and~~]
(37) Triazolam; and
(38) Zolpidem.

Section 3. [~~Analgesics, Non~~] Narcotics. The Cabinet for Human Resources hereby designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below: [~~which contains any quantity of the following substance, including its salts:~~]

(1) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane); and

(2) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 30, 1993
FILED WITH LRC: September 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by October 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to pharmacists because this administrative regulation updates the controlled substances listed in Schedule IV.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the administrative agency.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because the exemption applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 USC 801, and 21 CFR 1308.14.

2. State compliance standards. The criteria for substances in Schedule IV are set forth in KRS 218A.120.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule IV are set forth in 21 USC 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:040. Excluded [~~Exempt~~] over-the-counter products [~~preparations~~].

RELATES TO: KRS 218A.020 to 218A.130 [~~Chapter 218A~~]
STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

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

Section 1. Excluded Over-the-counter Products. Any compound, mixture or preparation containing any nonnarcotic substance which shall be excluded from the provisions of the federal controlled substance law as set forth in the April 1, 1993 [~~1992~~] edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.22, Excluded Substances, incorporated by reference, shall be excluded from the provisions of KRS Chapter 218A[~~, the Controlled Substances Act~~]. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.22 is on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and shall be available for public inspection and copying Monday through Friday 8 a.m. - 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: July 30, 1993
FILED WITH LRC: September 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by October 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to pharmacists because these amendments merely update the list of substances excluded under KRS Chapter 218A.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency because the regulation updates a list and conforms to existing federal regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because the exclusion applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 USC 811(g)(1), and 21 CFR 1308.22.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(4) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241 and 21 USC 811(g)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:045. Exempt prescription products [~~preparations~~].

RELATES TO: KRS 218A.020 to 218A.130 [~~Chapter 218A~~]

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250

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

Section 1. Exempt Prescription Products. Any compound, mixture or preparation containing any depressant or stimulant substance exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1993 [~~1992~~], edition of the Code of Federal Regulations, (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.32, Exempted [~~Excepted~~] Prescription Products, incorporated by reference, shall be exempted from the provisions of KRS Chapter 218A[~~; the Controlled Substances Act~~] for administrative purposes only. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.32 shall be on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection and copying Monday through Friday 8 a.m. to 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

RICE C. LEACH, M.D., Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: July 30, 1993

FILED WITH LRC: September 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1993, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be cancelled unless interested parties notify the following office in writing by October 16, 1993 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Edward Crews

(1) Type and number of entities affected: 3,000 pharmacists in the Commonwealth are affected by this regulation.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs or savings to pharmacists because this amendment merely updates the list of substances exempt under KRS Chapter 218A.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the agency because the regulation updates a list and conforms to existing federal regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because nonconformity with federal regulation would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because the exemption applies to all pharmacists or other dispensers regardless of specialty, location or type of practice.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242 and 21 CFR 1308.32.

2. State compliance standards. The criteria for exemption are set forth in KRS 218A.020(3) and 218A.090(4)(i).

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances to be exempt are set forth in 84 Stat. 1241 and 21 CFR 1308.32.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Family Services
(Proposed Amendment)

905 KAR 1:010. Application for permission to place or receive child.

RELATES TO: KRS 199.470(4), 199.471, 199.472, 199.473, 199.480, 199.520, 199.572, 615.030

STATUTORY AUTHORITY: KRS 194.050, 199.472

NECESSITY AND FUNCTION: This regulation is to provide procedures for the application for permission to place or receive a child, the disposition of a child preceding the granting or denying of permission to place or receive a child, the investigation of the circumstances surrounding the natural parents of a child to be placed or received under the law of independent adoption and the determination of suitability of the proposed adoptive parents to receive the child. The function of this regulation is to set forth the procedure in independent adoptions from the point of application to place or receive a child to the point of the filing of the petition to adopt. The regulation includes provisions relating to obtaining health history from the biological parents and to determining the biological and legal parents' feelings about possible future contact with the adopted person.

Section 1. The application for permission to place or receive a child, the DSS-187 herein incorporated by reference, shall be filed in duplicate, in writing with the Secretary of the Cabinet for Human Resources in care of the Commissioner of the Department for Social Services, by means of certified or registered mail. A certified or cashier's check payable to the Kentucky State Treasurer for a nonrefundable fee of $150 shall be filed with the written application for permission to place or receive a child. The DSS-187 may be obtained at the various local Department for Social Services offices or at the central office in Frankfort.

Section 2. The application for permission to place or receive a child shall be considered officially filed when received in the office of the Commissioner of the Department for Social Services. The returned receipt of certified or registered mail shall be proof of the filing of the application. However, the application shall not be considered filed unless it contains the required information and is received together with the $150 fee pursuant to KRS 199.473(5).

Section 3. Limitations to Filing. (1) [~~Proposed adoptive parents may apply to receive one (1) child at a time, unless applying for the available members of a sibling group.~~] In the case of twins who are available and suitable for adoption, an application shall not be accepted unless the proposed adoptive parents apply to receive both children.

(2) When an application for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous application has been withdrawn by a written request to the cabinet by one (1) of the parties involved.

[~~(3) An application shall not be accepted unless a previously placed child has been in the home for a minimum of one (1) year and the adoption legally finalized. An exception may be made when the child to be placed is a sibling of the previously placed child.~~]

Section 4. The application for permission to place or receive a child shall contain:

(1) Name and address of a person wishing to receive a child;

(2) Names and addresses of the biological mother and father and legal father of the child to be placed or received. If the identity of the father is unknown, that fact shall be stated;

(3) The name and date of birth or expected date of birth of the child to be placed or received;

(4) Present address of the child to be placed or received;

(5) A statement of whether custody of the child has been awarded to an agency or person other than the biological parents; and, if applicable a copy of the custody order; and

(6) Names and addresses of attorneys, intermediaries or agents representing the respective parties involved in the proposed placement.

Section 5. The application for permission to place or receive a child shall be signed by the person wishing to receive a child, the person wishing to place the child, or by both parties involved.

Section 6. An application for permission to place or receive a child shall not be processed if prior to the receipt of the application, the child was committed to the Cabinet for Human Resources by order of the district or circuit court.

Section 7. An application for permission to place or receive a child may be made prior to the birth of the child.

Section 8. The child shall not be in the physical care, control or custody of the proposed adoptive family until the written approval of

the Secretary of the Cabinet for Human Resources or his designee is received by the adoptive family.

Section 9. The Cabinet for Human Resources may cooperate with the parents of the child in finding suitable temporary placement for the child, pending the disposition of the application for permission to place or receive a child.

Section 10. During the time between the filing of the application for permission to place or receive a child and the decision of the Cabinet for Human Resources granting or denying the application, the responsibility for providing for the care of the child shall not rest with the Cabinet for Human Resources unless a court has placed the child with the cabinet, with the agreement of the cabinet, after the filing of the application. The responsibility shall remain with the parents of the child.

Section 11. The child shall not be physically placed in the care, control or custody of the proposed receiving parents until final written permission to receive the child has been granted by the Secretary of the Cabinet for Human Resources or his designee; however, if the child is found in the physical care of the proposed adoptive family, it is the responsibility of the applicants to arrange for the child's placement in a neutral setting within forty-eight (48) hours.

Section 12. When an application for permission to place or receive a child has been filed with the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Social Services shall cause an investigation to be made of the proposed receiving home, the best interest of the child.

Section 13. Interviews. (1) When the biological parents or legal father reside in Kentucky, a representative of the Cabinet for Human Resources shall make a diligent effort to interview the custodial biological parent of the child to be placed and the noncustodial, biological parent and legal father for the following purposes:

(a) To determine whether or not the biological mother and father are aware and accepting of the ethnic and religious background of the receiving parents;

(b) To determine whether or not they agree to the placement of the child with the proposed receiving parents;

(c) To obtain health history and sociological information on the child's family; and

(d) To determine the biological mother and father's feelings about possible future contact with the adopted person.

(2) The Cabinet for Human Resources may deny the application if the custodial parent refuses to be interviewed by the Cabinet for Human Resources representative or the appropriate out-of-state agency representative.

(3) Efforts shall be made to have parents interviewed, for the purposes specified in Section 13(1)(a) through (d), or to have home evaluations completed through interstate procedures when parents or prospective adoptive families live out of state. The home evaluation for out-of-state prospective adoptive families and interviews with out-of-state birth parents shall be accepted if conducted by the out-of-state public agency or by a licensed private adoption agency in the respective state if the public agency is unable or unwilling to provide the service.

(4) If after diligent efforts of the out-of-state public or private agency, the biological parents cannot be interviewed, or if the information and material cannot be obtained, the Secretary of the Cabinet for Human Resources or his designee shall not be precluded from approving the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 14. The Cabinet for Human Resources may deny the application if the custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family.

Section 15. When the cabinet's investigation has been completed, the applicants shall be notified by registered or certified mail of the decision of the Secretary of the Cabinet for Human Resources or his designee, either granting or denying permission for the placement or receiving of the child. If the permission is granted, the child may be placed in the home of the receiving parents forthwith, if other requirements, including the requirements of the Interstate Compact on the Placement of Children, if applicable, have been met. If the permission is denied, the receiving parents or the birth parents may, within ten (10) days after notice of denial, appeal the decision to the circuit court.

Section 16. When a child has been placed in a proposed receiving home with the permission of the Secretary of the Cabinet for Human Resources or his designee, the proposed receiving parents may file the petition for adoption in the circuit court in the county of their residence three (3) months after the date of the child's placement in their home with the secretary's or his designee's written approval in accordance with KRS 199.470(4) and 199.473.

Section 17. Material Incorporated by Reference. (1) The application to place or receive a child is being incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: September 13, 1993

FILED WITH LRC: September 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 21,1993, at 9 a.m. in the Vital Statistics Conference Room, 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 October 16, 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 those individuals that request an application to place or receive a child pursuant to KRS 199.473. During FY '91 the Department for Social Services received 432 applications to place or receive a child. During FY '92 we received 413 applications and during FY '93 365 applications were officially filed. This amendment revises the administrative regulation to allow proposed adoptive parents to file simultaneous independent adoption applications and deletes the provision that requires a one year waiting period from the time a child was previously place in the adoptive home.

(a) Direct and indirect costs or savings to those affected: Direct and indirect costs to the affected entities are in the payment of the $150 nonrefundable fee with the written application to place or receive a child pursuant to KRS 199.473(5). During FY '93 the costs were $54,750 which were received with the 365 applications.

1. First year: Direct and indirect costs to the affected entities are in the payment of the $150 nonrefundable fee with the written application to place or receive a child pursuant to KRS 199.473(5). During FY '93 the costs were $54,750 which were received with the 365 applications.

2. Continuing costs or savings: Excluding the statutory fee, there

will not be any continuing costs or savings to the affected entities as the proposed amended regulations will allow proposed adoptive parents to file simultaneous independent adoption applications and not require the one year waiting period from the time a child was previously placed in the adoptive home.

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.

(b) Reporting and paperwork requirements: Excluding the payment of the fee with the application, the only change in the regulation is that proposed adoptive parents will be allowed to file simultaneous independent adoption applications and not require the one year waiting period from the time a child was previously placed in the adoptive home.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is the receipt of the fee that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child. The promulgating agency may see an increase in the number of independent adoption applications filed, resulting in additional investigations and reporting requirements for staff.

(a) Direct and indirect costs or savings: The savings for the promulgating agency are the receipt of the fees that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child. Additional costs to the agency may be incurred from an increase in the number of independent adoption applications filed resulting in additional investigations and reporting requirements for staff.

1. First year: The savings for the promulgating agency are the receipt of the fees that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child.

2. Continuing costs or savings: Excluding the receipt of the fees and the additional staff time required for process and investigating, there will not be any continuing cost or savings for the Department for Social Services as the proposed regulations only allow proposed adoptive parents to file simultaneous independent adoption applications and deletes the provision that requires a one year waiting period from the time a child was previously place in the adoptive home.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs, or effect competition for the Department for Social Services, because the proposed regulations only allow proposed adoptive parents to file simultaneous independent adoption applications and deletes the provision that requires a one year waiting period from the time a child was previously place in the adoptive home.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements except that the promulgating agency may see an increase in the number of independent adoption applications filed resulting in additional investigations and reporting requirements for staff.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations only allow proposed adoptive parents to file simultaneous independent adoption applications and deletes the provision that requires a one year waiting period from the time a child was previously place in the adoptive home.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or a duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulations.

(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 regulations.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with the conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedures for the application to place or receive a child and complies with KRS Chapter 13A.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 1993

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission

9 KAR 1:040. Initial registration statement and registration card.

RELATES TO: KRS 11A.211, 11A.241(4),(5)
STATUTORY AUTHORITY: KRS 11A.241(4),(5),(6)
NECESSITY AND FUNCTION: KRS 11A.201 to 11A.246 and 11A.990(5) to (9) establishes the requirements for executive agency lobbying, including forms and penalties for violation thereof. The effective date of Senate Bill 7, 1993 (1st Extra. Sess.) Ky. Acts Ch. 4, secs. 45 to 55 (to be codified as KRS 11A.201 to 11A.246 and 11A.990(5) to (9)) is September 16, 1993. KRS 11A.211(1) requires the filing of an initial registration statement by an executive agency lobbyist and his employer within ten (10) days following the engagement of an executive agency lobbyist. KRS 11A.211(6) requires the commission to issue a registered executive agency lobbyist a registration card. Engaged executive agency lobbyists and their employers will be required to file initial registration statements with the commission on the effective date of Senate Bill 7. The commission is required to implement the provisions of KRS 11A.201 to 11A.246 by administrative regulation, including the initial registration statement form. This administrative regulation establishes the initial registration form and the registration card.

Section 1. Definitions. "Regular and substantial basis" means the executive agency lobbying activity regarding a decision that involves state expenditures that exceed $5,000.

Section 2. (1) Effective September 16, 1993, an "Initial Registration Statement" shall be filed by an engaged executive agency lobbyist and his employer within ten (10) days following the engagement of the lobbyist.

(2) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist has been engaged or for which he is responsible, such as an award of a:

(a) Grant for social services;

(b) Lease for office space or equipment;

(c) Contract to provide food, clothing or other consumable products;

(d) Personal service contract.

(3) The "Initial Registration Statement" shall be signed in ink of any color except black.

(4)(a) The "Initial Registration Statement" may be reproduced by an executive agency lobbyist or his employer.

(b) The signature on an "Initial Registration Statement" shall be an original signature.

Section 3. Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Executive Agency Lobbyist/Employer Initial Registration Statement (EBEC:EAL:I 9/93)"; and

(b) "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist (9/93)".

(2) The "Executive Agency Lobbyist/Employer Initial Registration Statement (EBEC:EAL:I 9/93)" may be inspected, copied, or obtained from the Executive Branch Ethics Commission, Room 71-D, State Capitol, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

LIVINGSTON TAYLOR, Chairman
APPROVED BY AGENCY: September 9, 1993
FILED WITH LRC: September 9, 1993 at 1 p.m.

PUBLIC Hearing: A public hearing of this administrative regulation shall be held on Monday, October 25, 1993, at 10 a.m., eastern time, at the Capitol Building, Room 110, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, October 20, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 hearing. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jill LeMaster, Executive Director, Executive Branch Ethics Commission, Room 71-D, State Capitol, Frankfort, Kentucky 40601, (502) 564-7954.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jill LeMaster

(1) Type and number of entities affected: It is estimated that the maximum number of lobbyists required to file the "Initial Registration Statement" is 200.

(a) Direct and indirect costs or savings to those affected: There are no costs of savings to the affected individuals.

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: Individuals are required to file within 10 days of their engagement as a compensated executive agency lobbyist.

(2) Effects on the promulgating administrative body: Additional time from staff will be required to distribute the forms, receive and process the completed forms and issue registration cards.

(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: Additional time from staff will be required to distribute the forms, receive and process the completed forms and issue registration cards.

(3) Additional factors increasing or decreasing costs:

(4) Assessments of alternative methods; reasons why alternatives were rejected: KRS Chapter 11A does not permit alternative methods.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All persons serving as executive agency lobbyists and their employers are required to file.

GENERAL GOVERNMENT CABINET
State Board of Elections

31 KAR 5:020. Placement of voting machines.

RELATES TO: KRS 117.065
STATUTORY AUTHORITY: KRS 117.015(1), 117.035(1)
NECESSITY AND FUNCTION: County boards of elections are required to select voting locations. This regulation describes the placement of voting machines so as to prevent unlawful voting activity.

Section 1. Where polling is conducted by the voters' operation of a machine, whether mechanical or electronic, the machine shall be positioned so that all persons using the machine for voting are visible to the clerk of the election and to the voters waiting to use the machine.

Section 2. Where polling is conducted at a machine which employs a curtain or similar device to protect the secrecy of the voters' selections, the machine shall be placed so that all persons entering the area behind the curtain are visible to the clerk of the election and to the voters waiting to use the machine.

Section 3. Where polling is conducted by paper ballot or by the use of paper cards as part of an electronic voting system, the tables or desks used by the voters in filling out the ballots or cards shall be positioned so that all persons filling out the ballots or cards are visible to the clerk of the election and to the voters waiting to vote.

Section 4. In no case shall the county board of elections authorize the placement of voting machines in a room or area separated by a wall or other obstruction from the area occupied by the clerk of the election and the voters waiting to vote.

BOB BABBAGE, Chairman
APPROVED BY AGENCY: September 14, 1993
FILED WITH LRC: September 15, 1993 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1993 at 10 a.m. in the conference room of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 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 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: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, KY 40601-3240, (502) 564-7100.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Russell
(1) Type and number of entities affected: 120 county boards of election.
(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings to the county boards of election.
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: There are no reporting or paperwork requirements for the county boards of election.
(2) Effects on the promulgating administrative body: There are no effects on the State Board of Elections.
(a) Direct and indirect costs or savings: There will be no direct or indirect costs or savings to the State Board of Elections.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements for the State Board of Elections.
(3) Assessment of anticipated effect on state and local revenues: There will be no anticipated effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods considered; this was the only method approved by the State Board of Elections in order to prevent unlawful voting activity.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no known statutes, administrative regulations or government policies which are in conflict, overlapping or duplication with this proposed administrative regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with the conflicting provision:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering is unnecessary because this proposed administrative regulation must apply uniformly to all voting locations in 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? Yes
2. State what unit, part or division of local government this administrative regulation will affect. This proposed administrative regulation will affect the 120 county boards of election.
3. State the aspect or service of local government to which this administrative regulation relates. The county boards of election are required to select the voting locations. This proposed administrative regulation relates to the placement of voting machines in those voting locations.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-)
Expenditures (+/-)
Other Explanation: This proposed administrative regulation has no fiscal impact for the county boards of election.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry

201 KAR 8:420. The prevention of transmission of human immunodeficiency virus and hepatitis B virus to patients by dental health care workers.

RELATES TO: 42 USC Section 300ee-2 note
STATUTORY AUTHORITY: KRS 313.220(4)
NECESSITY AND FUNCTION: 42 USC Section 300ee-2 note

requires each state to institute the guidelines issued by the United States Centers for Disease Control or guidelines which are equivalent to those promulgated by the Centers for Disease Control concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure-prone invasive procedures. This administrative regulation establishes these guidelines for dentists and other dental health care workers.

Section 1. Definitions. (1) "HIV" means the human immunodeficiency virus.

(2) "HBV" means the hepatitis B virus.

(3) "Universal precautions" means the appropriate use of hand and skin washing, protective barriers, care in the use and disposal of needles and other sharp instruments, and those other techniques recommended in current U.S. Centers for Disease Control Morbidity and Mortality Weekly Report, June 24, 1988, Volume 37, Number 24 and Morbidity and Mortality Weekly Report, May 28, 1993, Volume 42, Number RR-8, which are hereby incorporated by reference. Copies may be inspected, obtained or copied at the board office during regular business hours.

(5) "Licensee" means a dentist or dental hygienist licensed by this board.

(6) "Dental health care worker" or "DHCW" means a licensee, or an unlicensed person, including students and trainees, whose activities involve contact with:

(a) Patients or with teeth;

(b) Blood or other body fluids from patients in a dental health care setting or laboratory; or

(c) Instruments, equipment, appliances or intraoral devices that have been used in the mouth which may be contaminated by contact with body fluids, teeth or saliva.

(7) "Invasive procedure" means entry into mouth, body tissues, cavities or organs.

(8) "Board" means the Kentucky Board of Dentistry.

Section 2. Provisions for Licensees Generally. (1) A licensee shall:

(a) Adhere to universal precautions in his dental practice; and

(b) Ensure that DHCW's under his direction, control, supervision, or employment, also adhere to universal precautions.

(2) A licensee who employs a DHCW shall:

(a) Establish policies for initial and continuing education and training of the DHCW in the need for routine use of universal precautions for all patients;

(b) Provide the DHCW with equipment and supplies necessary to minimize the risk of infection with HIV, HBV, or other bloodborne pathogens; and

(c) Monitor adherence by the DHCW to universal precautions and other recommended protective measures.

Section 3. Provisions for HIV and HBV Seropositve Licensees. (1) A licensee who performs invasive procedures and who knows his status to be HIV seropositive or HBV seropositive in the absence of hepatitis B vaccination may seek counsel from the board.

(2) Upon the request of a licensee, the executive director of the board or his designee shall convene an expert review panel. The panel shall consist of the following:

(a) The licensee's personal physician;

(b) An infectious disease specialist with expertise in the epidemiology of HIV and HBV transmission;

(c) A licensee with expertise in the procedures performed by the requesting licensee; and

(d) The state or local public health officer or his designee.

(3) The executive director or his designee and the expert review panel shall follow the confidentiality requirements of KRS 214.625(5) and 61.878(1)(a).

(4) After review of a particular case, the expert review panel shall offer counsel regarding under what circumstances, if any, the licensee may continue to perform invasive procedures.

GARTH D. BOBROWSKI, D.M.D., President

APPROVED BY AGENCY: September 11, 1993

FILED WITH LRC: September 14, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on Thursday, October 28, 1993, at 1 p.m., at the Office of the Kentucky Board of Dentistry, 2106 Bardstown Road, Louisville, Kentucky 40205. Those interested in attending this hearing shall notify Gary Munsie, Executive Director, Kentucky Board of Dentistry, in writing, by October 23, 1993, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the 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 written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 2106 Bardstown Road, Louisville, KY 40205, Phone: (502) 451-6832, FAX: (502) 456-4377.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: D. Brent Irvin

(1) Type and number of entities affected: Approximately 6,000 dentists, dental hygienists and dental health care workers under their direction, supervision or control.

(a) Direct or indirect costs or savings to those affected: There are no direct or indirect costs or savings to affected entities because this administrative regulation adopts materials incorporated by reference which requires substantially the same precautions as those required by the federal Occupational Safety and Health Administration.

(b) Reporting and paperwork requirements: Affected licensees or dental health care workers may report their status to the board.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The regulation will require some additional cost in its implementation. It is impossible to estimate since there is no way to estimate the number of cases.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The regulation does not add additional reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be some cost to the board in additional cases. There is no way to estimate the number of these cases or the costs.

(4) Assessment of alternative methods; reasons why alternative methods were rejected: The method used was felt to be one which would allow implementation and remain consistent with federal law.

(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 the 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. This administrative regulation affects only dental health care workers. The only requirement is the provision for following federally mandated universal precautions for the prevention of the transmission of HIV and HBV. The federal requirements do not differentiate or permit different treatment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation consisting of the federal mandate. 42 USC 300ee-2 note, Section 633 of the Treasury, Postal Service and General Government Appropriations Act, 1992, PL 102-141.

2. State compliance standards. This administrative regulation states that all dentists, dental hygienists, and other dental health care workers shall adhere to universal precautions to avoid the transmission of HIV or HBV. A licensee or dental health care worker who is HIV or HBV seropositive may seek counsel from the Board of Dentistry. Upon such request, the board may convene an expert review panel to advise the licensee or dental health care worker. If the licensee does not comply with the panel's recommendations and poses a significant risk to patients or other dental health care workers, the panel may initiate a complaint.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires the adoption of the CDC guidelines, or their equivalent, on the prevention of transmission of HIV and HBV to patients during exposure-prone invasive procedures. Those guidelines require the following:

(a) use of universal precautions.

(b) adherence to guidelines for disinfection and sterilization of reusable devices used in invasive procedures.

(c) exposure-prone procedures should be identified.

(d) health care workers who perform exposure-prone procedures should know their HIV and HBV status.

(e) health care workers who are HIV or HBV positive should not perform exposure-prone procedures unless they have sought counsel from an expert review panel.

The CDC guidelines are contained in Morbidity and Mortality Weekly Report, June 24, 1988, Volume 37, Number 24 and Morbidity and Mortality Weekly Report, May 28, 1993, Volume 42, Number RR-8.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? It is believed that this administrative regulation is substantially equivalent to the CDC guidelines, mandated by federal law.

5. Justification for the imposition of stricter standard, or additional or different responsibilities or requirements. Not applicable.

BOARD OF EMBALMERS AND FUNERAL DIRECTORS

201 KAR 15:021. Repeal of 201 KAR 15:020 and 201 KAR 15:070.

RELATES TO: KRS 316.130, 316.210(4)

STATUTORY AUTHORITY: KRS 311.210(4)

NECESSITY AND FUNCTION: 201 KAR 15:020 is unnecessary because KRS 316.210(4) authorizes the board to adopt, promulgate, and enforce administrative regulations. 201 KAR 15:070 exceeds the board's authority and therefore is being repealed.

Section 1. 201 KAR 15:020, Amendments to rules and regulations, is hereby repealed.

Section 2. 201 KAR 15:070, Reinstatement after failure to renew license, is hereby repealed.

EDD PRESTON, President

APPROVED BY AGENCY: August 25, 1993

FILED WITH LRC: August 27, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on the 22nd day of October, 1993, at 9 a.m., in Room 327, State Capitol, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by the 17th day of October, 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: Bill Pettus, Assistant Attorney General, Office of the Attorney General, 209 St. Clair Street, Room 205, Frankfort, Kentucky 40601, (502) 564-4994.

REGULATORY IMPACT ANALYSIS

Contact Person: Bill Pettus

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no additional direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings.

1. First year: There will be no additional direct or indirect costs or savings.

2. Continuing costs or savings: There will be no additional direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation repeals two existing regulations. The alternative of not repealing the regulations was rejected because the regulations were not in conformity with KRS Chapter 13A.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute, administrative regulation, or government policy.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering was not applied because all embalmers and funeral directors are treated uniformly under the law.

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:200. Minimum standards of practice for mortgage inspections in Kentucky.

RELATES TO: KRS Chapter 322

STATUTORY AUTHORITY: KRS 322.290(2)(f)

NECESSITY AND FUNCTION: KRS 322.290 requires the Board

of Registration for Professional Engineers and Land Surveyors to adopt appropriate standards of practice. This proposed regulation will establish minimum standards of practice for mortgage inspections in Kentucky.

Section 1. (1) A professional land surveyor shall meet the minimum standards established in this administrative regulation.

(2) He shall demonstrate a thorough knowledge of the property that is the subject of a mortgage inspection by:

(a) Conducting adequate research; and

(b) Obtaining and retaining sufficient recorded documentation.

Section 2. Work Order Required. (1) Prior to conducting a mortgage inspection, a professional land surveyor shall obtain a work order:

(a) Stating that the borrower or purchaser has been advised of the:

1. Types of services available; and

2. Scope of each type of service; and

(b) That has been signed by the borrower or purchaser.

(2) If the work order requires a flood plain certification, statements regarding the flood plain shall contain the source or basis of the statements by reference to:

(a) Flood plain maps, by map identification number and date; and

(b) Any levels run by the surveyor to verify the elevation of the property.

(3) A work order shall include the following:

(a) The name of the borrower;

(b) The date the work was ordered;

(c) The name of the person ordering the work;

(d) The address or location of the parcel;

(e) The record source of the parcel;

(f) The anticipated closing date;

(g) The required delivery date;

(h) The statements in subsection (4) of this section.

(4)(a) Mortgage inspection. The sole purpose of this inspection is to obtain mortgage title insurance. This is the minimum service that your lender requires for closing your loan. It is a location of improvements and cursory check for violations or encroachments onto or from the subject property based on existing but not confirmed evidence. This does not constitute a boundary survey and is subject to any inaccuracies that a subsequent boundary survey may disclose; no property corners will be set; and, it should not be used or relied upon for the establishment of any fence, structure or other improvement. Flood plain certification is restricted to a review of the Flood Insurance Rate Maps (FIRM) (latest revision), and shall not be construed as a confirmation or denial of flooding potential.

(b) Boundary survey and improvement location. A boundary survey of the subject property will be made and the property corners will be located and verified or reset. The improvements on the property will be located and a check for violations or encroachments onto or from the subject property will be made. This survey may be used by the property owner for the construction of a fence or other improvement. Flood plain certification is restricted to a review of the Flood Insurance Rate Maps (FIRM) (latest revision), and shall not be construed as a confirmation or denial of flooding potential.

(c) ALTA/ACSM land title survey. This is the most comprehensive type of survey and improvement location. It covers all the aspects of the boundary survey and improvement location and identification for any additional evidence of possession or use which could be adverse to the interest of the purchaser. This survey may include definitive statements regarding the flooding potential in addition to a review of Flood Insurance Rate Maps (FIRM).

(5)(a) A board "work order" sample form may be used.

(b) "Work Order (8-93)" is incorporated by reference.

(c) It may be inspected, copied, or obtained at 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 3. Recorded Documentation and Boundary Evidence. (1) A professional land surveyor shall obtain recorded documentation pertaining to the property boundary that is sufficient to demonstrate general knowledge of the given area.

(2) Field crews shall be provided with current information necessary to determine property dimensions in the field.

(3) Field crews shall conduct a diligent search for existing boundary evidence.

(4) The highest available order of monumentation shall be used.

(5) The monumentation or boundary evidence used shall be shown on the drawing.

(6) Conflicting boundary information shall be:

(a) Clearly shown on the drawing; and

(b) Reported to the client and the buyer in writing.

Section 4. Field Procedures. (1) A field crew shall be provided with current information necessary to determine the property dimensions in the field.

(2) A diligent search for existing boundary evidence shall be made by a field crew.

(3) The highest order of monumentation and boundary evidence shall be used.

(4) Detailed notes shall be:

(a) Taken on all mortgage inspections; and

(b) Kept as part of the professional land surveyor's permanent record.

(5) If the field survey methods selected by the surveyor do not produce a level of certainty sufficient to determine whether encroachments exist, the surveyor shall recommend a boundary survey to the borrower or purchaser.

Section 5. Drafting of the Parcel. (1) A drawing of a parcel that is inspected shall be used in support of the certificate of mortgage inspection.

(2) The following items shall be identified on a drawing of a parcel that is inspected.

(a) Property lines shall be shown by:

1. Boundary dimensions and bearings from the deed; or

2. Boundary dimensions and bearings from a record plat; or

3. By actual field measurement.

(b) The method of determination or basis of property lines shall be clearly shown.

(c) Major improvement locations shall be shown:

1. With dimensions to the nearest property lines;

2. With a minimum of three (3) dimensions; and

3. In a manner sufficient to locate the major improvement.

(d) Location dimensions shall be shown:

1. By offsets perpendicular to straight property lines; or

2. By offsets radial to curved property lines.

(e) Major improvements shall include:

1. Residences;

2. Garages;

3. Outbuildings;

4. Barns;

5. Driveways;

6. Pools;

7. Porches; and

8. Patios.

(f) Apparent encroachments shall be:

1. Noted and described; and

2. Clearly shown.

(g) Means of access shall:

1. Be shown clearly and graphically; and

2. Include shared access and shared driveways.

(h) Platted and apparent easements shall be clearly identified.

(i) The source of record information for platted and apparent easements shall be identified by:

1. Deed book and page of recording; or

2. Title company commitment, including the name of title company and commitment number; and

3. For apparent easements for items such as power lines, the name of the easement holder.

(j) Platted setback lines shall be shown graphically.

(k) Adjacent owner and record source shall be noted on the drawing.

1. Lot numbers may be used for adjacent properties located in recorded subdivisions.

2. Conflicting boundary information shall be:

a. Clearly shown on the drawing; and

b. Reported to the client and the buyer in writing.

(l) If the address of the inspected parcel is:

1. Posted, it shall be shown; or

2. Not posted, a statement to that effect shall be included.

(m) A north arrow with the basis for the meridian shall be shown on the drawing.

(n) A graphic scale shall be shown on the drawing.

(o) All apparent encroachments shall be:

1. Noted and described on the drawing; and

2. Clearly shown on the drawing.

(p) A flood plain certification required by the work order shall reference:

1. Flood plain maps by map identification number and date; and

2. Levels run by the surveyor to verify the elevation of the inspected property.

(q) The following caption shall appear prominently on the sketch:

MORTGAGE INSPECTION
This does not constitute a boundary survey
and is not a recordable document.

(r) If the certification and the drawing are on separate pieces of paper, this shall be stated in the report as: (Example: page 1 of 2, page 2 of 2).

(s) The sign and seal of the surveyor and the date of the mortgage inspection.

Section 6. Certification. (1) A mortgage inspection shall not contain the word "survey" in any part of the certification.

(2) The mortgage inspection certification shall contain:

(a) The name, address and telephone number of the professional land surveyor responsible for the mortgage inspection;

(b) The name of the party who ordered the work;

(c) A statement that the mortgage inspection was conducted either by the professional land surveyor or under the surveyor's direct supervision;

(d) The date the inspection was made;

(e) The record source of the property;

(f) A statement that:

1. The accompanying sketch or drawing is a true representation of the conditions found at the time of the inspection;

2. The mortgage inspection is prepared for mortgage title insurance purposes only;

3. The document does not constitute a boundary survey;

4. The mortgage inspection is subject to any inaccuracies that a subsequent boundary survey may disclose;

5. No property corners were set;

6. The information shown on the sketch should not be used to establish any fence, structure or other improvement;

7. The linear or angular values shown on the drawing are based on record information, and have not been verified unless so noted.

(3) A mortgage inspection by a professional land surveyor shall:

(a) Be signed by the surveyor;

(b) Bear his seal; and

(c) Note the date of the mortgage inspection.

ROBERT L. KAISER, P.E., Chairman

APPROVED BY AGENCY: September 15, 1993

FILED WITH LRC: September 15, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed regulation, 201 KAR 18:200, shall be held October 25, 1993, at 1:30 p.m. at the office of the board, the Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by October 20, 1993 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is requested. If you do not wish to attend the public hearing, you may submit written comments on the proposed amendment. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulations to: Larry Perkins, Executive Director, State Board of Registration of PE/LS, 160 Democrat Drive, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Larry S. Perkins

(1) Type and number of entities affected: All registered land surveyors; approximately 1,000.

(a) Direct and indirect costs or savings to those affected. N/A

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:

(2) Effects on the promulgating administrative body: No effect on agency.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation wit conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No; applies to all land surveyor registrants equally.

KENTUCKY RIVER AUTHORITY

420 KAR 1:010. Definitions.

RELATES TO: KRS 151.100 to 151.600, 151.700 to 151.730, 151.990, 223.400 to 223.460, 224.70, 224.73

STATUTORY AUTHORITY: KRS 151.710, 151.720, 151.725, 151.730

NECESSITY AND FUNCTION: KRS 151.700 through 151.730 authorize the Kentucky River Authority to manage the surface water and groundwater of the Kentucky River basin. The authority has the

power and duty to develop and to implement programs relating to the locks and dams on the Kentucky River; to acquire, to sell and to lease property; to develop recreational areas; to issue revenue bonds; to assess fees for water use; to contract for services; to adopt administrative regulations protecting water in the Kentucky River basin; to develop and to implement comprehensive plans for protecting the water of the Kentucky River basin; and to collaborate with the Natural Resources and Environmental Protection Cabinet and other state agencies in coordinating Kentucky River basin water resource and water quality activities. This administrative regulation establishes definitions pertaining to those powers and duties.

Section 1. Definitions. The definitions set forth in this administrative regulation describe terms used in this chapter. Terms not defined in this administrative regulation shall be deemed to be consistent with terms used in the statutes and administrative regulations administered by the cabinet. If not so defined or if the context requires, the terms shall have the meanings attributed by common use.

(1) "Administrative services" means clerical assistance provided by the cabinet in accordance with KRS 151.710(10), including secretarial and bookkeeping assistance.

(2) "Annual report" means the report the authority submits annually to the Governor and to the Legislative Research Commission pursuant to KRS 151.710(12).

(3) "Best management practices" or "BMPs" means those practices which are effective and practical structural or nonstructural methods which prevent or reduce the movement of pollutants from the land to surface water or groundwater, or which otherwise protect surface water or groundwater from potential adverse effects of land use activities such as agricultural or silvicultural activities, stormwater run-off, spills or leaks, and land application or land disposal of waste.

(4) "Cabinet" means the Natural Resources and Environmental Protection Cabinet created pursuant to KRS 224.10-010.

(5) "County long-range water resource plan" means the county long-range water resource plan submitted by a county for the authority's review pursuant to KRS 151.720(9) and 420 KAR 1:030.

(6) "Discharge" or "discharge of a pollutant" means any addition of any pollutant or combination of pollutants to surface water or groundwater of the Kentucky River basin from any point source. This includes additions of pollutants into waters of the Kentucky River basin from surface run-off which is collected or channeled by man; discharges through pipes, sewers or other conveyances whether publicly or privately owned; and discharges through pipes, sewers, or other conveyances leading into privately or publicly owned treatment works.

(7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any waste constituent may enter the environment or be emitted into the air or discharged into water.

(8) "Diversion" means a nonconsumptive redirection of all or part of the flow of a stream.

(9) "Drought response plan" means the drought response plan for the Kentucky River basin developed by the authority pursuant to KRS 151.720(9) and 420 KAR 1:030.

(10) "Effluent limitations" means any restrictions or prohibitions established by the authority, or by the cabinet if the authority fails to establish them, which include effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into water.

(11) "Fee" means a water use fee for protection of the surface water and groundwater of the Kentucky River basin, paid to the authority by persons who use that water.

(12) "Floodplain" means the normally dry area or wetland adjoining a stream or lake that is inundated during a flood event.

(13) "Floodway" means that area of a stream or watercourse necessary to carry off flood water as determined by the cabinet or by the authority.

(14) "Gross withdrawal" means the amount of water withdrawn.

(15) "Groundwater" or "ground water" means all water which fills the natural openings under the earth's surface, including all underground watercourses, artesian basins, reservoirs, lakes, and other bodies of water below the earth's surface.

(16) "Kentucky River Authority" or "authority" means the Kentucky River Authority created pursuant to KRS 151.710.

(17) "Kentucky River basin" or "basin" means all geographic areas of the Commonwealth contained within the watershed of the Kentucky River and its tributaries, including surface water and groundwater, and delineated as hydrologic unit code 0510020 in the document entitled "Hydrologic Unit Map - 1974, State of Kentucky", published in 1974 and reprinted in 1988, and incorporated by reference in Section 2 of this administrative regulation.

(18) "Leakage" or "leak" means the amount of water lost due to leaks in a water supply or water distribution system after it has been withdrawn by the water supplier or purchased by the water supply distributor.

(19) "Long-range water resource plan" means the water supply plan described in 401 KAR 4:220, with the additions required by 420 KAR 1:030.

(20) "Mainstem Kentucky River" means the Kentucky River, including Pool 14, which extends from the North Fork of the Kentucky River at River Mile 261.6 above the confluence of Walkers Creek, the Middle Fork of the Kentucky River at River Mile 6.0 below the confluence of Coal Branch, and the South Fork of the Kentucky River at River Mile 4.0 below the confluence of Paw Paw Creek, to River Mile 0 at the confluence with the Ohio River at Carrollton.

(21) "Map of potential sources of water pollution" means the map of potential sources of contamination described in 401 KAR 4:220, Section 6 with the additions required by 420 KAR 1:030.

(22) "Net withdrawal" means the difference between the amount of water withdrawn for noncontact cooling water and the amount of that water discharged.

(23) "Noncontact cooling water" means surface water or groundwater withdrawn from the Kentucky River basin for the purpose of reducing the temperature of a product or equipment used in making a product, if the following conditions exist:

(a) The noncontact cooling water does not come into contact with the product;

(b)The noncontact cooling water is discharged in accordance with a Kentucky Pollutant Discharge Elimination System (KPDES) permit that identifies the water as noncontact or once-through cooling water;

(c) The noncontact cooling water is discharged in accordance with water quality standards;

(d) The noncontact cooling water is discharged within 300 linear feet of the withdrawal point or into the same pool of water; and

(e) Net withdrawal is no greater than twenty (20) percent.

(24) "Nonpoint source pollution" means pollution caused by diffuse sources, including land run-off, atmospheric deposition, or percolation through soils and rocks.

(25) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, interstate body, estate, or other entity.

(26) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(27) "Pollutant" means dredged spoil, solid waste, hazardous waste, special waste, incinerator residue, sewage, sewage sludge, garbage, chemical materials, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil,

industrial waste, municipal waste, silvicultural waste, agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water.

(28) "Project" means a project authorized by KRS 151.700 to 151.730 and approved by the authority, including staff and overhead.

(29) "Quarterly report" means the report the authority submits quarterly to the General Assembly's Committee on Appropriations and Revenue pursuant to KRS 151.720(14).

(30) "Revenue bond" or "bond" means a revenue bond described by KRS 151.720(5) and KRS 151.730.

(31) "Semipublic water supplier" means any water supply system that serves more than three (3) families, but is not a water supplier or distributor.

(32) "Seven (7) day, ten (10) year low flow" or "7Q10" means that minimum average flow which occurs for seven (7) consecutive days with a recurrence interval of ten (10) years.

(33) "Standard" or "water quality standard" means an administrative regulation adopted by the authority, or by the cabinet if the authority fails to adopt it, establishing the use to be made of a surface water or groundwater and the water quality criteria necessary to maintain and protect that use.

(34) "Stream" means a river, creek or channel, having well-defined banks, in which water flows for substantial periods of the year to drain a given area, or any lake or other body of water.

(35) "Surface waters" means those above-ground waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface.

(36) "Tier I fee" means a fee:

(a) Funding watershed management projects of benefit to the entire watershed of the Kentucky River basin and funding the authority's general expenses;

(b) Set by the authority based on the authority's budget; and

(c) Paid by all persons who use surface water or groundwater of the Kentucky River basin.

(37) "Tier II fee" means a fee:

(a) Funding any project of benefit to a certain part of the Kentucky River basin;

(b) Set by the authority based on the authority's budget; and

(c) Paid by all persons who use surface water or groundwater of the Kentucky River basin and who derive a direct benefit from that project.

(38) "Transfer" means an interbasin diversion of surface waters or groundwaters to or from the Kentucky River basin.

(39) "Unified long-range water resource plan" or "unified plan" means the unified long-range water resource plan for the Kentucky River basin developed by the authority pursuant to KRS 151.720(9) and 420 KAR 1:030.

(40) "Use" or "using", if referring to the use of water in the Kentucky River basin described in KRS 151.720(5), means the withdrawal of surface water from the Kentucky River or its tributaries, the withdrawal of groundwater within the Kentucky River basin, the point source discharge of pollutants to the Kentucky River or its tributaries, the point source discharge of pollutants to groundwater within the Kentucky River basin, the use of surface water from the Kentucky River or its tributaries for generation of hydroelectric power, the diversion or transfer of waters in the Kentucky River basin, and the use of the Kentucky River or its tributaries for navigation or recreation. "Use" or "using" shall not apply to those facilities using water primarily for agricultural purposes.

(41) "Water" means all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes and wetlands, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Kentucky River basin.

(42) "Water conservation" means methods and applications of passive and active water savings and reuse devices, components and processes to reduce demand for water supply.

(43) "Water pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of water in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes.

(44) "Water resources map" means the water resources map described in 401 KAR 4:220, Section 6, and required by 420 KAR 1:030.

(45) "Water shortage emergency" means the authority's declaration that a significant number of citizens in the emergency area are served by water suppliers that are experiencing deficits in the amount of water available for use.

(46) "Water shortage response plan" means the water shortage response plan described by 401 KAR 4:220, Section 6 and required by 420 KAR 1:030.

(47) "Water shortage warning" means the authority's declaration that some water suppliers in the warning area are experiencing deficits in the amount of water available for use.

(48) "Water shortage watch" means the authority's declaration that hydrologic conditions exist in the watch area that indicate the potential for deficits in the amount of water available for use by water suppliers.

(49) "Water supplier" means any system that provides water to the public for human consumption, has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and withdraws more than fifty (50) percent of the water it distributes.

(50) "Water supply distributor" means any system that provides water to the public for human consumption, has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and depends on a water supplier to provide fifty (50) percent or more of the water it distributes.

(51) "Water supply plan" means the final plan document approved by the cabinet pursuant to KRS 151.110 through 151.118 and 401 KAR 4:220.

(52) "Water supply protection area" means the designated watershed of a surface water supply source, or the designated recharge area of a groundwater supply source, or a designated wellhead protection area.

(53) "Water supply reservoir" means a water retaining structure with the ability to retain at least thirty (30) days of average water use at normal pool, used by a water supplier.

(54) "Water supply source" means a particular site or classification of site where water is withdrawn.

(55) "Watershed" means all the area from which all drainage passes a given point downstream.

(56) "Wetlands" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwaters at a frequency and duration sufficient to support, and that under normal circumstance does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, floodplains and similar areas.

(57) "Withdraw" or "withdrawal of water" means the actual removal or taking of water from any surface waters or groundwaters of the Kentucky River basin.

Section 2. Incorporation by Reference. The document entitled "Hydrologic Unit Map - 1974, State of Kentucky", published in 1974 and reprinted in 1988, is hereby incorporated by reference. It is available for public inspection and copying, subject to copyright law,

at the office of the Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.

THOMAS M. DORMAN, Chairman

APPROVED BY AGENCY: September 10, 1993

FILED WITH LRC: September 13, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for October 25, 1993, 1 p.m. eastern time, at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Roberta Benson in writing at the address noted below by October 20, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the authority a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Roberta Benson no later than 4:30 p.m. on October 25, 1993. The Kentucky River Authority does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Roberta Benson at the address below.

CONTACT PERSON: Thomas M. Dorman, Chairman, Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Thomas M. Dorman

(1) Type and number of entities affected: This administrative regulation affects persons using water in the following counties, which lie completely within the Kentucky River basin:

Breathitt	Madison
Clay	Owen
Estill	Owsley
Fayette	Perry
Franklin	Powell
Garrard	Scott
Jessamine	Wolfe
Lee	Woodford
Leslie	

This administrative regulation affects persons using water in the following counties, of which some portion lies in the Kentucky River basin:

Anderson	Jackson
Bell	Kenton
Boone	Knott
Boyle	Knox
Carroll	Letcher
Casey	Lincoln
Clark	Menifee
Clay	Mercer
Gallatin	Montgomery
Grant	Rockcastle
Harlan	Shelby
Henry	Trimble

(a) Direct and indirect costs or savings to those affected:

1. First year: None, since this administrative regulation only establishes definitions.

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 additional requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None, since this administrative regulation only establishes definitions.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None, since this administrative regulation only establishes definitions.

(3) Assessment of anticipated effect on state and local revenues: None, since this administrative regulation only establishes definitions.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None, since this administrative regulation only establishes definitions.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None, although programs administered by the Natural Resources and Environmental Protection Cabinet pursuant to KRS Chapters 151 and 224 are similar, the authority and the cabinet coordinate their efforts.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: While there is no conflict with the cabinet's programs, KRS 151.720 requires the authority to coordinate its efforts with the cabinet's, and requires that the authority's programs be no less stringent than the cabinet's. Further, KRS 224.70-140 requires the cabinet's permits to be consistent with the authority's programs.

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. Tiering was not applied because this administrative regulation only establishes definitions.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. Statutory authority is set forth in KRS 151.700 through KRS 151.730.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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? No, because this administrative regulation only establishes definitions for the other administrative regulations in 420 KAR Chapter 1.

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

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 amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY RIVER AUTHORITY

420 KAR 1:020. Administrative procedures of the authority.

RELATES TO: KRS 151.100 to 151.600, 151.700 to 151.730, 151.990, 223.400 to 223.460, 224.70, 224.73

STATUTORY AUTHORITY: KRS 151.710, 151.720, 151.725, 151.730

NECESSITY AND FUNCTION: KRS 151.700 through 151.730 authorize the Kentucky River Authority to manage the surface water and groundwater of the Kentucky River basin. The authority has the power and duty to develop and to implement programs relating to the locks and dams on the Kentucky River; to acquire, to sell and to lease property; to develop recreational areas; to issue revenue bonds; to assess fees for water use; to contract for services; to adopt administrative regulations protecting waters in the Kentucky River basin; to develop and to implement comprehensive plans for protecting the water of the Kentucky River basin; and to collaborate with the Natural Resources and Environmental Protection Cabinet and other state agencies in coordinating Kentucky River basin water resource and water quality activities. This administrative regulation establishes administrative procedures employed by the authority in implementing those powers and duties.

Section 1. Election of Vice-chairman. In addition to electing a chairman as provided by KRS 151.710(6), the authority shall elect one (1) of its members as vice-chairman. The vice-chairman may act for the authority in the absence or unavailability of the chairman.

Section 2. Meetings of the Authority. Meetings of the authority shall be conducted in accordance with the Kentucky Open Meetings Law, KRS 61.805 through 61.850.

Section 3. Inspection of Public Records. (1) Public records of the authority shall be made available for public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) The authority shall make available to a public library located in each county contained in whole or in part within the Kentucky River basin copies of the following documents:

(a) The authority's quarterly and annual reports;

(b) The authority's draft and final unified long-range water resource plans;

(c) The authority's draft and final drought response plans;

(d) The authority's letter approving a county long-range water resource plan;

(e) A county's draft and final long-range water resource plans; and

(f) The authority's administrative regulations.

Section 4. Mailing List. The authority shall maintain a list of members of the public, including members of the media, to whom copies of the public notices described by this administrative regulation may be provided. Any person may request to be placed upon or removed from the authority's mailing list. The authority may periodically revise its list to remove the names of persons who do not respond to the authority's request to update the mailing list.

Section 5. Public Participation. (1) Scope and applicability. This section applies to the following activities:

(a) The authority's development of a drought response plan;

(b) The authority's development of a unified long-range water resource plan.

(2) Public notice.

(a) Before the authority prepares a draft drought response plan or a draft unified long-range water resource plan, it shall notify the public that it is seeking public participation in the preparation of those drafts. The authority shall notify the public by publishing a notice in the Lexington Herald-Leader and in a local newspaper serving each county located in whole or in part within the Kentucky River basin, and by mailing the notice to the county judge-executive of each county located in whole or in part within the Kentucky River basin. The notice shall schedule a public meeting or a series of public meetings.

(b) After the authority prepares a draft drought response plan or a draft unified long-range water resource plan, it shall notify the public by publishing a notice in the Lexington Herald-Leader and in a local newspaper serving each county located in whole or in part within the Kentucky River basin, and by mailing the notice to the county judge-executive of each county located in whole or in part within the Kentucky River basin. The public notice shall state that a draft drought response plan or a draft unified long-range water resource plan has been prepared, that copies are available for inspection in accordance with the Kentucky Open Records Act, that copies have been delivered to local libraries, and that the public shall have thirty (30) days from the date of newspaper publication to comment and to request a public hearing.

(3) Public meeting. The authority shall hold a public meeting or a series of public meetings prior to preparing a draft drought response plan or a draft unified long-range water resource plan.

(4) Public comment period. There shall be thirty (30) days from the date of newspaper publication for the public to comment upon a draft drought response plan or a draft unified long-range water resource plan.

(5) Public hearing. If requested within the first fifteen (15) days of the thirty (30) day public comment period described in subsection (4) of this section, the authority shall conduct a public hearing before the close of the public comment period on the draft drought response plan or the draft unified long-range water resource plan. The public hearing shall be conducted in Frankfort unless the authority determines it is more appropriate to hold the public hearing in another county located within the Kentucky River basin. Any person may appear at the public hearing and offer written or oral comments. The authority may limit oral testimony to five (5) minutes or less per speaker.

(6) Consideration of public comments. The authority shall consider all oral and written comments received during the public comment period described in subsection (4) of this section. The authority may prepare a written response to those oral and written comments, and may disseminate copies of the response to commentors and to others requesting copies.

(7) Final action. The authority shall not take final action on a draft drought response plan or a draft unified long-range water supply plan until it has completed its consideration of all public comments. The authority shall publish notice that it has taken final action by publishing a notice in the Lexington Herald-Leader and in a local newspaper serving each county located in whole or in part within the Kentucky River basin, and by mailing the notice to the county judge-executive of each county located in whole or in part within the Kentucky River basin.

Section 6. Advisory Committees. (1) The authority may appoint advisory committees to assist and to advise the authority.

(2) In appointing advisory committees, the authority shall consider appointing representatives of the public; representatives of federal, state, county or municipal governments; representatives of water

resource and water quality agencies; representatives of water-using industries; representatives of water utilities, representatives of groups interested in water-related issues; and representatives of labor and agriculture.

(3) Any person who wishes to serve on an advisory committee may contact the authority in writing and so request. The authority shall consider each request.

Section 7. Request for Authority Action. (1) Any person may request that the authority consider any matter within its jurisdiction. The request shall be made in writing to the chairman of the authority and shall be submitted at least thirty (30) days in advance of a meeting of the authority in order to be considered at that meeting.

(2) The chairman shall notify the remaining members of the authority of the request for consideration of the matter prior to the next meeting of the authority.

(3) The person making the request for consideration of a matter may appear before the authority at the next meeting and discuss that matter. The authority may limit the time spent on that person's presentation or in consideration of the matter.

(4) The authority may take final action at that meeting, defer final action to a later meeting, or decline to consider the matter.

THOMAS M. DORMAN, Chairman

APPROVED BY AGENCY: September 10, 1993

FILED WITH LRC: September 13, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for October 25, 1993, 1 p.m. Eastern Time at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Roberta Benson in writing at the address noted below by October 20, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the authority a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Roberta Benson no later than 4:30 p.m. on October 25, 1993. The Kentucky River Authority does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Roberta Benson at the address below.

CONTACT PERSON: Thomas M. Dorman, Chairman, Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Thomas M. Dorman

(1) Type and number of entities affected: This administrative regulation affects persons using water in the following counties, which lie completely within the Kentucky River basin:

Breathitt	Madison
Clay	Owen
Estill	Owsley
Fayette	Perry
Franklin	Powell
Garrard	Scott
Jessamine	Wolfe
Lee	Woodford
Leslie	

This administrative regulation affects persons using water in the following counties, of which some portion lies in the Kentucky River basin:

Anderson	Kenton
Bell	Knott
Boone	Knox
Boyle	Letcher
Carroll	Lincoln
Casey	Menifee
Clark	Mercer
Clay	Montgomery
Gallatin	Morgan
Grant	Rockcastle
Harlan	Shelby
Henry	Trimble
Jackson	

(a) Direct and indirect costs or savings to those affected:

1. First year: None, since this administrative regulation only establishes the authority's operating procedures.

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: There are no direct or indirect costs or savings to the authority because the cabinet is absorbing the costs associated with this administrative regulation and because no savings have been identified.

2. Continuing costs or savings: Continuing costs for the authority will be limited to distribution costs for public notices and costs associated with conducting public hearings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation does not alter existing statutory reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None, since this administrative regulation only establishes the authority's operating procedures.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The authority did not consider alternatives to be feasible, partly because of the authority's statutory obligations, and partly because the authority is explaining its obligations to the public, not regulating the conduct of the public.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None, although programs administered by the Natural Resources and Environmental Protection Cabinet pursuant to KRS Chapters 151 and 224 are similar, the authority and the cabinet coordinate their efforts.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: While there is no conflict with the cabinet's programs, KRS 151.720 requires the authority to coordinate its efforts with the cabinet's, and requires that the authority's programs be no less stringent than the cabinet's. Further, KRS 224.70-140 requires the cabinet's permits to be consistent with the authority's programs.

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. Tiering was not applied because this administrative regulation explains the authority's obligations to the public; it does not regulate the conduct of the

public.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. Statutory authority is set forth in KRS 151.700 through KRS 151.730.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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? No, because this administrative regulation only explains the obligations of the authority to the public.

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

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 amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY RIVER AUTHORITY

420 KAR 1:030. Management of surface water and groundwater in the Kentucky River basin.

RELATES TO: KRS 151.100 to 151.600, 151.700 to 151.730, 151.990, 223.400 to 223.460, 224.70, 224.73

STATUTORY AUTHORITY: KRS 151.710, 151.720, 151.725, 151.730

NECESSITY AND FUNCTION: KRS 151.700 through 151.730 authorize the Kentucky River Authority to manage the surface water and groundwater of the Kentucky River basin. The authority has the power and duty to develop and to implement programs relating to the locks and dams on the Kentucky River; to acquire, to sell and to lease property; to develop recreational areas; to issue revenue bonds; to assess fees for water use; to contract for services; to adopt administrative regulations protecting water in the Kentucky River basin; to develop and to implement comprehensive plans for protecting the water of the Kentucky River basin; and to collaborate with the Natural Resources and Environmental Protection Cabinet and other state agencies in coordinating Kentucky River basin water resource and water quality activities. This administrative regulation explains certain powers and duties and imposes certain requirements relating to management of surface water and groundwater in the Kentucky River basin.

Section 1. Scope and Applicability. (1) Purpose. It shall be the purpose of this administrative regulation to manage the surface water and groundwater of the Kentucky River basin.

(2) Compatibility. The authority's administrative regulations set forth in this chapter shall be interpreted to be compatible with the statutes and administrative regulations administered by the cabinet.

Section 2. Collection and Dissemination of Information. The authority may conduct research, collect and interpret data, assemble a data base, and disseminate reports on water management issues. Those water management issues include:

(1) The relationship of water to other natural resources;

(2) Wastewater treatment technology;

(3) Groundwater movement and other hydrogeologic conditions;

(4) The relationship between water price and water demand;

(5) Hydrologic conditions;

(6) Groundwater and surface water quality;

(7) Water use;

(8) Water resource planning needs;

(9) Conservation and development issues;

(10) Allocation of water resources;

(11) Management, including operation, maintenance and replacement of locks and dams; and

(12) Social, economic, demographic and political issues affecting water resources.

Section 3. County Long-range Water Resource Plans. (1) Scope. Each county located in whole or in part within the Kentucky River basin shall develop and submit to the authority a long-range water resource plan.

(2) Contents of the plan. Each long-range water resource plan shall include the following:

(a) A water supply plan;

(b) A water shortage response plan for each water supplier and water supply distributor in the county that uses water withdrawn from the Kentucky River basin or serves customers in the Kentucky River basin;

(c) A water resources map providing coverage for the portions of the county that lie within the Kentucky River basin; and

(d) A map of all potential sources of water pollution for the portions of the county that lie within the Kentucky River basin, including potential sources of water pollution affecting the water supply protection area of a water supplier, if the authority is able to provide the funding necessary for creating the map.

(3) Deadline for submitting the plan. Each county shall submit to the authority its long-range water resource plan within thirty (30) days after the county obtains the cabinet's approval of its water supply plan.

Section 4. Unified Long-range Water Resource Plan. The authority shall prepare a unified long-range water resource plan for the Kentucky River basin, which shall at a minimum address the following:

(1) Physical, chemical and biological conditions existing in the surface water and groundwater of the Kentucky River basin;

(2) The construction, acquisition, operation and control of projects and facilities for the storage and release of water;

(3) The regulation of flows and allocation of supplies of surface water and groundwater within the basin;

(4) Protection of public health;

(5) Means of controlling surface water and groundwater quality;

(6) Economic development;

(7) Improvement of fisheries;

(8) Development of recreational opportunities and recreational areas;

(9) Abatement of water pollution;

(10) The design, construction, operation and maintenance of projects and facilities for floodplain protection and flood damage reduction;

(11) Control of run-off, erosion, and agricultural and urban nonpoint source pollution;

(12) Stormwater management;

(13) Encouragement and promotion of soil conservation, land reclamation and land management to prevent and to control erosion and to improve water quality;

(14) The use of water within the basin for the generation of hydroelectric power;

(15) Control of withdrawals and diversions of surface water and ground water;

(16) Commercial and recreational navigation on the Kentucky River;

(17) Acquisition and utilization of the Kentucky River lock and dam system;

(18) The relationship of county long-range water resource plans to the authority's unified long-range water resource plan;

(19) The need for basin-wide and specific local land and water conservation measures and practices; and

(20) Any approval criteria established by the cabinet.

Section 5. Drought Response Plan. (1) The authority shall prepare a drought response plan for the Kentucky River basin, which shall at a minimum address the following:

(a) Identification of those flow rates in the mainstem Kentucky River at which the authority would declare a water shortage watch, a water shortage warning or a water shortage emergency for persons using the mainstem Kentucky River as a water supply source;

(b) Identification of criteria for declaring a water shortage watch, a water shortage warning, or a water shortage emergency for water suppliers and other persons using water in the Kentucky River basin who do not use the mainstem Kentucky River as a water supply source;

(c) Development of a methodology for equitably reducing withdrawals, diversions or transfers from the mainstem Kentucky River and for using the locks or other devices to manipulate flows and water stored in the dams on the mainstem Kentucky River;

(d) Identification of alternatives for emergency public water supplies, such as large springs or interbasin transfers; and

(e) Inclusion of any approval criteria established by the cabinet.

(2) The authority may declare a water supply watch, a water supply warning, or a water supply emergency for all or a portion of the Kentucky River basin if conditions cause an actual or threatened shortage of water supply sources within the Kentucky River basin. The authority shall base its declaration on its drought response plan. The declaration shall identify the area affected and the types of water supply sources affected. The authority shall consult the cabinet before declaring a water supply emergency. The authority may request that the governor declare a water emergency as provided by KRS 151.200.

Section 6. Review of Applications for Cabinet Permits. While the cabinet is reviewing applications for permits, the authority may also review those applications and may offer to the cabinet comments on whether those permit applications comply with the requirements of KRS 151.700 through 151.730 and this chapter.

Section 7. Leak Detection Program. The authority may administer a leak detection program for water suppliers and water supply distributors in the Kentucky River basin.

(1) Eligibility shall be based on such factors as:

(a) Size of the service area;

(b) Suspected extent of leakage;

(c) Number of customers; and

(d) Ability to pay for a leak detection program without financial assistance.

(2) The authority may pay up to 100 percent of the cost of a leak detection program for a water supplier or a water supply distributor.

THOMAS M. DORMAN, Chairman

APPROVED BY AGENCY: September 10, 1993

FILED WITH LRC: September 13, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for October 25, 1993, 1 p.m. eastern time at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Roberta Benson in writing at the address noted below by October 20, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the authority a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Roberta Benson no later than 4:30 p.m. on October 25, 1993. The Kentucky River Authority does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Roberta Benson at the address below.

CONTACT PERSON: Thomas M. Dorman, Chairman, Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Thomas M. Dorman

(1) Type and number of entities affected: This administrative regulation affects persons using water in the following counties, which lie completely within the Kentucky River basin:

Breathitt	Madison
Clay	Owen
Estill	Owsley
Fayette	Perry
Franklin	Powell
Garrard	Scott
Jessamine	Wolfe
Lee	Woodford
Leslie	

This administrative regulation affects persons using water in the following counties, of which some portion lies in the Kentucky River basin:

Anderson	Kenton
Bell	Knott
Boone	Knox
Boyle	Letcher
Casey	Lincoln
Carroll	Menifee
Clark	Mercer
Clay	Montgomery
Gallatin	Morgan
Grant	Rockcastle
Harlan	Shelby
Henry	Trimble
Jackson	

(a) Direct and indirect costs or savings to those affected:

1. First year: The counties are now obligated to prepare water supply plans pursuant to KRS 151.110 through KRS 151.118 and 401

KAR 4:220. The only additional planning obligations are minimal, and the obligation to prepare a map of potential sources of water pollution s contingent upon funding by the authority.

2. Continuing costs or savings: Same as described in (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Counties must submit to the authority long-range water resource plans.

(2) 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 to the authority because the cabinet is absorbing the costs associated with this administrative regulation and because no savings have been identified.

2. Continuing costs or savings: The only continuing costs associated with implementing this administrative regulation will be the salaries of the authority staff; staff will absorb these duties with the rest of their duties to the authority.

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 authority assessed the powers afforded to it, and selected these programs as the most beneficial to the Kentucky River basin at this time.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None, although programs administered by the Natural Resources and Environmental Protection Cabinet pursuant to KRS Chapters 151 and 224 are similar, the authority and the cabinet coordinate their efforts.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: While there is no conflict with the cabinet's programs, KRS 151.720 requires the authority to coordinate its efforts with the cabinet's, and requires that the authority's programs be no less stringent than the cabinet's. Further, KRS 224.70-140 requires the cabinet's permits to be consistent with the authority's programs.

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. Tiering was applied by allowing county water supply plans to serve as the major elements of the county long-range water resource plans, by timing the deadlines for submittal to preexisting deadlines, and by making a new obligation contingent upon funding by the authority.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. Statutory authority is set forth in KRS 151.700 through KRS 151.730.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation affects fiscal courts in the following counties, which lie completely within the Kentucky River basin:

Breathitt	Madison
Clay	Owen
Estill	Owsley
Fayette	Perry
Franklin	Powell
Garrard	Scott
Jessamine	Wolfe
Lee	Woodford
Leslie	

This administrative regulation affects fiscal courts in the following counties, of which some portion lies in the Kentucky River basin:

Anderson	Kenton
Bell	Knott
Boone	Knox
Boyle	Letcher
Carroll	Lincoln
Casey	Menifee
Clark	Mercer
Gallatin	Montgomery
Grant	Morgan
Harlan	Rockcastle
Henry	Shelby
Jackson	Trimble

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to counties' water resource planning obligations, as established by statute.

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 amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The fiscal impact of this administrative regulation is expected to be minimal because counties are already obligated to prepare water supply plans, because this administrative regulation uses the water supply plans as the major elements of the long-range water resource plans, because the deadline for submitting the long-range water resource plans is tied to the deadline for submitting water supply plans, and because a new planning obligation is contingent upon funding by the authority. Savings for local government-owned water suppliers and water supply distributors will result from any authority-funded leak detection program.

KENTUCKY RIVER AUTHORITY

420 KAR 1:040. Tier I water use fees.

RELATES TO: KRS 151.100 to 151.600, 151.700 to 151.730, 151.990, 223.400 to 223.460, 224.70, 224.73

STATUTORY AUTHORITY: KRS 151.710, 151.720, 151.725, 151.730

NECESSITY AND FUNCTION: KRS 151.700 through 151.730 authorize the Kentucky River Authority to manage the surface water and groundwater of the Kentucky River basin. The authority has the power and duty to develop and to implement programs relating to the locks and dams on the Kentucky River; to acquire, to sell and to lease property; to develop recreational areas; to issue revenue bonds; to assess fees for water use; to contract for services; to adopt

administrative regulations protecting water in the Kentucky River basin; to develop and to implement comprehensive plans for protecting the water of the Kentucky River basin; and to collaborate with the Natural Resources and Environmental Protection Cabinet and other state agencies in coordinating Kentucky River basin water resource and water quality activities. This administrative regulation establishes Tier I water use fees.

Section 1. Purpose. This administrative regulation establishes Tier I fees and incidental charges for the withdrawal of surface water and groundwater from the Kentucky River basin.

Section 2. Persons Required to Pay Tier I Fee. The persons identified in this section of this administrative regulation shall pay to the authority the Tier I fee and incidental charges established by this administrative regulation, unless exempted by Section 3 of this administrative regulation.

(1) A person who withdraws surface water or groundwater from the Kentucky River basin for noncontact cooling water shall pay a Tier I fee based on net withdrawal, which shall be 150 percent of the Tier I fee for gross withdrawal.

(2) Unless entitled to a fee based on net withdrawal in accordance with subsection (1) of this section, a person who withdraws surface water or groundwater from the Kentucky River basin shall pay a Tier I fee based on gross withdrawal.

Section 3. Persons Exempted from Paying Tier I Fee. The following persons are exempted from paying the Tier I fees and incidental charges established by this administrative regulation:

(1) A person who withdraws surface water or groundwater from the Kentucky River basin primarily for agricultural use; and

(2) A person whose gross withdrawal of surface water or groundwater from the Kentucky River basin is less than 10,000 gallons per day.

Section 4. Tier I Fee Rates. (1) The Tier I fee for gross withdrawal shall be $0.028 per 1000 gallons and any portion thereof from the effective date of this administrative regulation through June 30, 1995. The Tier I fee for gross withdrawal shall be $0.022 per 1,000 gallons and any portion thereof from July 1, 1995 through June 30, 1996.

(2) The Tier I fee for net withdrawal shall be $0.028 per 1000 gallons or any portion thereof, multiplied by one and five-tenths (1.5), from the effective date of this administrative regulation through June 30, 1995. The Tier I fee for net withdrawal shall be $0.022 per 1000 gallons and any portion thereof, multiplied by one and five-tenths (1.5), from July 1, 1995 through June 30, 1996.

(3) The Tier I fees may be amended as necessary to fund the Tier I projects budgeted by the authority. The authority shall submit to the General Assembly with its budget request a fee structure necessary to fund those Tier I projects. The authority shall set the amended fees based on the approved budget.

(4) Charges incidental to Tier I fees. The authority may assess a person required to pay a Tier I fee the following charges incidental to collection of that fee:

(a) A deposit of up to three (3) months estimated billings, except for bills of local governments, with interest to accrue at six (6) percent per annum and the deposit to be returned in a year if prior payments were timely;

(b) A late payment charge of up to five (5) percent of the last quarter's bill for payments that are twenty (20) days late or, for local governments, more than ten (10) days after the last regular meeting of local government, whichever is later;

(c) A returned check charge of fifteen (15) dollars; and

(d) A field collection charge, with a minimum charge of fifty (50) dollars and a maximum charge of $500.

Section 5. Collection of Fees. (1) A person required by this administrative regulation to pay a Tier I fee shall pay that fee quarterly, and shall pay any charge incidental to the Tier I fee upon the authority's request. Payment shall be made within ten (10) days of receipt of a bill from the authority.

(2) Fees and incidental charges shall be paid by certified check or money order, and made payable to the Kentucky State Treasurer.

(3) A person paying a Tier I fee for gross or net withdrawal shall complete and submit to the authority the water withdrawal reporting form incorporated by reference in Section 6 of this administrative regulation, identifying the number of gallons withdrawn during that quarter. A person paying a Tier I fee for net withdrawal shall also complete and submit to the authority the water discharge reporting form incorporated by reference in Section 7 of this administrative regulation, identifying the number of gallons discharged. The water withdrawal and discharge reporting forms shall be submitted within fifteen (15) calendar days after the end of the quarter. A person paying a Tier I fee may use the water withdrawal reporting form required by KRS 151.160 and 401 KAR 4:010 in lieu of the water withdrawal reporting form incorporated by reference in Section 6 of this administrative regulation.

Section 6. Incorporation by Reference of Water Withdrawal Reporting Form. The document entitled "Water Withdrawal Reporting Form" is hereby incorporated by reference. The effective date shall be the effective date of this administrative regulation. It is available for public inspection and copying, subject to copyright law, at the office of the Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.

Section 7. Incorporation by Reference of Water Discharge Reporting Form. The document entitled "Water Discharge Reporting Form" is hereby incorporated by reference. The effective date shall be the effective date of this administrative regulation. It is available for public inspection and copying, subject to copyright law, at the office of the Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.

THOMAS M. DORMAN, Chairman

APPROVED BY AGENCY: September 10, 1993

FILED WITH LRC: September 13, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for October 25, 1993, 1 p.m. eastern time at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Roberta Benson in writing at the address noted below by October 20, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the authority a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Roberta Benson no later than 4:30 p.m. on October 25, 1993. The Kentucky River Authority does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Roberta Benson at the address below.

CONTACT PERSON: Thomas M. Dorman, Chairman, Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Thomas M. Dorman

(1) Type and number of entities affected: This administrative regulation affects the water withdrawers identified in the document entitled "Explanation of Tier I and Tier II Water Use Fees Prepared for the Kentucky River Authority, September 10, 1993," and available from the Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601.

(a) Direct and indirect costs or savings to those affected:

1. First year: The costs for each withdrawer are identified in the document described in paragraph (1) above.

2. Continuing costs or savings: The costs will vary according to the number of gallons withdrawn.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The costs will vary according to the number of gallons withdrawn and the timeliness of payment. Incidental charges related to fee collection may be incurred.

(b) Reporting and paperwork requirements: Gross withdrawers must report quarterly on the amount of water withdrawn. Net withdrawers must also report quarterly on the amount of water discharged. Withdrawers may use withdrawal forms submitted to the cabinet if they hold cabinet-issued water withdrawal permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs will be absorbed by the authority's staff or by the cabinet in the event fees do not fund staff.

2. Continuing costs or savings: Costs will be absorbed by the authority's staff or by the cabinet in the event fees do not fund staff.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The authority will be sending bills to the withdrawers which will require staff time and postage.

(3) Assessment of anticipated effect on state and local revenues: The effect on the authority's revenues is identified in the document described in paragraph (1) above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Fees were selected because they are authorized by statute and because no alternatives were available that allowed the authority to carry out its statutory mandate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None, although programs administered by the Natural Resources and Environmental Protection Cabinet pursuant to KRS Chapters 151 and 224 are similar, the authority and the cabinet coordinate their efforts.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: While there is no conflict with the cabinet's programs, KRS 151.720 requires the authority to coordinate its efforts with the cabinet's, and requires that the authority's programs be no less stringent than the cabinet's. Further, KRS 224.70-140 requires the cabinet's permits to be consistent with the authority's programs.

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. Tiering was applied by distinguishing between gross and net withdrawals, and by allowing currently-required water withdrawal reporting forms to be used if available.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. Statutory authority is set forth in KRS 151.700 through KRS 151.730.

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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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? No, because no county has been identified as the withdrawer subject to this administrative regulation.

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

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 amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

KENTUCKY RIVER AUTHORITY

420 KAR 1:050. Tier II water use fees.

RELATES TO: KRS 151.100 to 151.600, 151.700 to 151.730, 151.990, 223.400 to 223.460, 224.70, 224.73

STATUTORY AUTHORITY: KRS 151.710, 151.720, 151.725, 151.730

NECESSITY AND FUNCTION: KRS 151.700 through 151.730 authorize the Kentucky River Authority to manage the surface water and groundwater of the Kentucky River basin. The authority has the power and duty to develop and to implement programs relating to the locks and dams on the Kentucky River; to acquire, to sell and to lease property; to develop recreational areas; to issue revenue bonds; to assess fees for water use; to contract for services; to adopt administrative regulations protecting water in the Kentucky River basin; to develop and to implement comprehensive plans for protecting the water of the Kentucky River basin; and to collaborate with the Natural Resources and Environmental Protection Cabinet and other state agencies in coordinating Kentucky River basin water resource and water quality activities. This administrative regulation establishes Tier II water use fees.

Section 1. Purpose. This administrative regulation establishes Tier II fees and incidental charges for the withdrawal of surface water from the main stem of the Kentucky River.

Section 2. Persons Required to Pay Tier II Fees. The persons identified in this section of this administrative regulation shall pay to the authority the Tier II fees and incidental charges established by this administrative regulation, unless exempted by Section 3 of this administrative regulation.

(1) A person who withdraws surface water from the mainstem of the Kentucky River downstream of lock and dam 14 for noncontact cooling water shall pay a Tier II fee based on net withdrawal, which shall be 150 percent of the Tier II fee for gross withdrawal.

(2) Unless entitled to a fee based on net withdrawal in accor-

dance with subsection (1) of this section, a person who withdraws surface water from the main stem of the Kentucky River downstream of lock and dam 14 shall pay a Tier II fee based on gross withdrawal.

Section 3. Persons Exempted from Paying Tier II Fees. The following persons are exempted from paying the Tier II fees and incidental charges established by this administrative regulation:

(1) A person who withdraws surface water from the main stem of the Kentucky River downstream of lock and dam 14 primarily for agricultural use; and

(2) A person whose gross withdrawal of surface water from the main stem of the Kentucky River downstream of lock and dam 14 is less than 10,000 gallons per day.

Section 4. Tier II Fee Rates. (1) The Tier II fee for gross withdrawal shall be $0.016 per 1000 gallons and any portion thereof, from the effective date of this administrative regulation through retirement of any revenue bond for which the Tier II fee provides debt service.

(2) The Tier II fee for net withdrawal shall be $0.016 per 1000 gallons and any portion thereof, multiplied by one and five-tenths (1.5), from the effective date of this administrative regulation through retirement of any revenue bond for which the Tier II fee provides debt service.

(3) The Tier II fees may be amended as necessary to fund the Tier II projects budgeted by the authority. The authority shall submit to the General Assembly with its budget request a fee structure necessary to fund those Tier II projects. The authority shall set the amended fees based on the approved budget.

(4) Charges incidental to Tier II fees. The authority may assess a person required to pay a Tier II fee the following charges incidental to collection of that fee:

(a) A deposit of up to three (3) months estimated billings, except for bills of local governments, with interest to accrue at six (6) percent per annum and the deposit to be returned in a year if prior payments were timely;

(b) A late payment charge of up to five (5) percent of the last quarter's bill for payments that are twenty (20) days late or, for local governments, more than ten (10) days after the last regular meeting of local government, whichever is later;

(c) A returned check charge of fifteen (15) dollars; and

(d) A field collection charge, with a minimum charge of fifty (50) dollars and a maximum charge of $500.

Section 5. Collection of Fees. (1) A person required by this administrative regulation to pay a Tier II fee shall pay that fee quarterly and shall pay charges incidental to that fee upon the authority's request. Payment shall be made within ten (10) days of receipt of a bill from the authority.

(2) Fees and incidental charges shall be paid by certified check or money order, made payable to the Kentucky State Treasurer.

(3) A person paying a Tier II fee for gross or net withdrawal shall complete and submit to the authority the water withdrawal reporting form incorporated by reference in Section 6 of this administrative regulation, identifying the number of gallons withdrawn during that quarter. A person paying a Tier II fee for net withdrawal shall also complete and submit to the authority the water discharge reporting form incorporated by reference in Section 7 of this administrative regulation, identifying the number of gallons discharged. The water withdrawal and discharge reporting forms shall be submitted within fifteen (15) calendar days after the end of the quarter. A person paying a Tier II fee may use the water withdrawal reporting form required by KRS 151.160 and 401 KAR 4:010 in lieu of the water withdrawal reporting form incorporated by reference in Section 6 of this administrative regulation.

Section 6. Incorporation by Reference of Water Withdrawal Reporting Form. The document entitled "Water Withdrawal Reporting Form" is hereby incorporated by reference. The effective date shall be the effective date of this administrative regulation. It is available for public inspection and copying, subject to copyright law, at the office of the Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.

Section 7. Incorporation by Reference of Water Discharge Reporting Form. The document entitled "Water Discharge Reporting Form" is hereby incorporated by reference. The effective date shall be the effective date of this administrative regulation. It is available for public inspection and copying, subject to copyright law, at the office of the Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.

THOMAS M. DORMAN, Chairman

APPROVED BY AGENCY: September 10, 1993

FILED WITH LRC: September 13, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for October 25, 1993, 1 p.m. eastern time at the Capital Plaza Tower Auditorium, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify Roberta Benson in writing at the address noted below by October 20, 1993, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide the authority a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by Roberta Benson no later than 4:30 p.m. on October 25, 1993. The Kentucky River Authority does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodations for this public hearing, such as an interpreter or alternate formats for printed materials, should be submitted to Roberta Benson at the address below.

CONTACT PERSON: Thomas M. Dorman, Chairman, Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Thomas M. Dorman

(1) Type and number of entities affected: This administrative regulation affects the water withdrawers identified in the document entitled "Explanation of Tier I and Tier II Water Use Fees, Prepared for the Kentucky River Authority, September 10, 1993", and available from the Kentucky River Authority, 107 Mero Street, Frankfort, Kentucky 40601.

(a) Direct and indirect costs or savings to those affected:

1. First year: The costs for each withdrawer are identified in the document described in paragraph (1) above.

2. Continuing costs or savings: The costs will vary according to the number of gallons withdrawn.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The costs will vary according to the number of gallons withdrawn and the timeliness of payment. Incidental charges related to fee collection may be incurred.

(b) Reporting and paperwork requirements: Gross withdrawers must report quarterly on the amount of water withdrawn. Net

withdrawers must also report quarterly on the amount of water discharged. Withdrawers may use withdrawal forms submitted to the cabinet if they hold cabinet-issued water withdrawal permits.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs will be absorbed by the authority's staff or by the cabinet in the event fees do not fund staff.

2. Continuing costs or savings: Costs will be absorbed by the authority's staff or by the cabinet in the event fees do not fund staff.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The authority will be sending bills to the withdrawers which will require staff time and postage.

(3) Assessment of anticipated effect on state and local revenues: The effect on the authority's revenues is identified in the document described in paragraph (1) above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Fees were selected because they are authorized by statute and because no alternatives were available that allowed the authority to carry out its statutory mandate.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None, although programs administered by the Natural Resources and Environmental Protection Cabinet pursuant to KRS Chapters 151 and 224 are similar, the authority and the cabinet coordinate their efforts.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: While there is no conflict with the cabinet's programs, KRS 151.720 requires the authority to coordinate its efforts with the cabinet's, and requires that the authority's programs be no less stringent than the cabinet's. Further, KRS 224.70-140 requires the cabinet's permits to be consistent with the authority's programs.

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. Tiering was applied by distinguishing between gross and net withdrawals, and by allowing currently-required water withdrawal reporting forms to be used if available.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. Statutory authority is set forth in KRS 151.700 through KRS 151.730.

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? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 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? No, because no county has been identified as the withdrawer subject to this administrative regulation.

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

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 amounts cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 13:031. Approved alcohol or substance abuse education or treatment program.

RELATES TO: KRS 186.560, 189A.070

STATUTORY AUTHORITY: KRS 186.400, 186.560(5) NECESSITY AND FUNCTION: KRS 186.560(5) allows a person convicted the first time of driving a vehicle which is not a motor vehicle under the influence or any substance which may impair driving ability or fraudulently using a drivers license for identification to have his driving privilege revocation period eliminated by successfully completing a Transportation Cabinet approved alcohol or substance education or treatment program. This administrative regulation identifies the approved programs.

Section 1. For the purpose of KRS 186.560(5) the Transportation Cabinet approves all education and treatment programs licensed by the Human Resources Cabinet pursuant to KRS 189A.040.

Section 2. 601 KAR 13:030, Alcohol driver education clinic is repealed.

Section 3. 601 KAR 13:050, Alcohol driver education program is repealed.

DON C. KELLY, Secretary
NORRIS BECKLEY, Commissioner

APPROVED BY AGENCY: September 3, 1993

FILED WITH LRC: September 9, 1993 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on October 27, 1993 at 1 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by October 22, 1993 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may he 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 October 22, 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. Written comments will be accepted until the close of the business on October 27, 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 25 persons convicted each year in Kentucky of operating a vehicle which is not

a motor vehicle while under the influence.

(a) Direct and indirect costs or savings to those affected: The Transportation Cabinet has, since the DUI law changes in 1991, sent offenders to the same Alcohol Driver Education and Treatment Programs as required for those persons found guilty of a violation of KRS Chapter 189A. However, prior to that time, the Transportation Cabinet operated an Alcohol Driver Education Program for all first offenders. The cost of this program was $50. The cost of the program required under KRS Chapter 189A is $200 on the average. Therefore, there is an increase of $150 for each of the 25 persons. By state law all others found guilty of DUI are required to attend the more extensive education/treatment program.

1. First year: $2250

2. Continuing cost or savings: $2250 each year.

3. Additional factors increasing or decreasing costs: (note any effects upon competition):

(b) Reporting and paperwork requirements: Each of the 25 persons must enroll in and complete an education/treatment program and the confirming paperwork submitted to the Transportation Cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting or paperwork requirements: The Transportation Cabinet must enter the paperwork described in (1)(b) above into the Driver Licensing computer system.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: For just 25 persons a year the Transportation Cabinet could not afford to operate a program separate from the one operated by the Human Resources Cabinet.

(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. All persons convicted of operating a vehicle which is not a motor vehicle while under the influence need the same type of treatment/education that persons convicted of operating a motor vehicle under the influence receive.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer

701 KAR 5:110. Use of local monies to reduce unmet technology need.

RELATES TO: KRS 156.670, 157.650, 157.655, 157.660, 157.665, 160.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 156.160(1)(b) requires that the State Board for Elementary and Secondary Education promulgate administrative regulations governing the acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology. KRS 156.670(1) requires the development of the master plan for education technology to outline Commonwealth activities related to the purchase, development, and use of technology. The master plan requires districts to submit district technology plans which describe their unmet technology need. KRS 157.655 stipulates that a local public school district may participate in the education technology funding program based on the unmet technology need described in the local district plan and approved by the state board. Based on review of the unmet technology need in district technology plans, it has been determined that full implementation of KETS cannot be funded based solely on offers of assistance from the Education Technology Trust Fund. Therefore, this administrative regulation is promulgated to ensure that all school district technology procurements, in categories for which KETS standards for unmet need have been established, will reduce the unmet technology need regardless of source of funds.

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

(1) "Department" means the Kentucky Department of Education.

(2) "District technology plan" means the plan developed by the local school district and the Department of Education and approved by the State Board for Elementary and Secondary Education.

(3) "Kentucky Education Technology System" or "KETS" means the statewide system set forth in the technology master plan issued by the State Board for Elementary and Secondary Education with the recommendation of the Council for Education Technology and approved by the Legislative Research Commission.

(4) "Master plan" means the long-range plan for the implementation of the Kentucky Education Technology System as developed by the Council on Education Technology and approved by the State Board for Elementary and Secondary Education and the Legislative Research Commission.

(5) "Unmet technology need" means the total cost of technology needed to achieve the capabilities outlined in the approved technology plan of the local school district.

Section 2. Determination of Unmet Need. A local school district shall determine its unmet technology need as part of the technology planning process. Unmet technology need shall be audited by the department and subject to the approval of the State Board for Elementary and Secondary Education as part of the state review and assistance calculation process, as provided by the master plan. The district's unmet technology need shall be measured by comparing the district technology plan against standards established for KETS.

Section 3. Reducing Unmet Need. (1) In categories for which standards for unmet technology need are established, districts shall limit procurements to those which will reduce unmet technology need until the district's unmet technology need no longer exists.

(2) To assist districts in selecting technology which will reduce the unmet technology need, the Department of Education shall develop suggested procurement guidelines for equipment, software, and services based on KETS standards.

Section 4. Alternative Technology. Local school districts shall not be precluded from proposing alternative technologies in the local technology plan, particularly when the technology is proposed to achieve innovation.

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: September 14, 1993

FILED WITH LRC: September 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26,1993, 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 October 21, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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: Don Coffman

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: There is potential for cost avoidance and savings through adherence to statewide technology standards and use of state matching monies for technology procurements.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effect on competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(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: 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: Current situation (use of local funds to procure non-KETS compliant technology in some districts) is considered neither cost nor performance efficient.

(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: None

TIERING: Was tiering applied: No. Provisions apply equally to all 176 school districts.

CABINET FOR HUMAN RESOURCES
Kentucky Health Care Data Commission

902 KAR 65:010. Health data reporting by hospitals and ambulatory care facilities.

RELATES TO: KRS 216.270 to 216.287, 304.99-125

STATUTORY AUTHORITY: KRS 216.275, 216.280

NECESSITY AND FUNCTION: KRS 216.270 through 216.287 mandate the Kentucky Health Care Data Commission to promulgate regulations that require specified health care providers to furnish to the commission information relating to cost, quality and outcomes of health services provided in the Commonwealth. This regulation sets forth the data elements, forms, and timetables for submission required by the commission.

Section 1. Definitions. (1) "Hospitalization" means the inpatient episode defined by a patient's admission and discharge dates and identified by a patient control number unique to that inpatient episode.

(2) "Encounter" means each instance of ambulatory care and services provided for an ambulatory patient of a hospital or an ambulatory facility.

(3) "UB-82" means the uniform billing form, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for hospitals' use in billing for inpatient hospitalizations and outpatient and ambulatory encounters, ordered by the Commissioner of Insurance to be accepted by insurers effective May 19, 1983, and further identified by the federal Health Care Financing Administration as Form HCFA-1450 and approved under federal Office of Management and Budget number "OMB No. 0938-0279," as incorporated by reference in Section 8 of this administrative regulation.

(4) "UB-92" means the uniform billing form as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for hospitals' use in billing for inpatient hospitalizations and outpatient and ambulatory encounters effective with the transition period of October 1 through December 31, 1993 as planned by the Kentucky Uniform Billing Committee, and implemented by order of the Commissioner of Insurance dated July 8, 1993, and as incorporated by reference in Section 8 of this administrative regulation.

(5) "Uniform Billing Training Manual" means the manual of instructions distributed in 1983 for completing the UB-82, and its successor manual for completing the UB-92 developed as of June 24, 1993 and corrected August 4, 1993, both published by the Kentucky Uniform Billing Committee and both of which are incorporated by reference in Section 8 of this administrative regulation.

(6) "HCFA 1500" means Health Care Financing Administration Form 1500, commonly used to bill for ambulatory patient encounters and ordered by the Commissioner of Insurance to be accepted by insurers effective August 30, 1990, and further identified as Form OWCP-1500, as approved by the American Medical Association Council on Medical Service and approved under federal Office of Management and Budget number "OMB-0938-0008" as incorporated by reference in Section 8 of this administrative regulation.

(7) "Record" means documentation of one (1) hospitalization or one (1) ambulatory encounter on a UB-82, UB-92, or HCFA-1500, whether retained on a paper form or on a computer-readable electronic medium.

(8) "Agent" means any entity with which the commission may contract to perform any task specified by the commission pursuant to carrying out its statutory mandates.

Section 2. Data Submission Requirements. (1) Hospitals.

(a) Except as provided in subsection (4) of this section, hospitals, as defined in KRS 216.270, shall record each hospitalization and ambulatory encounter on the UB-92 utilizing the instructions in the Uniform Billing Training Manual, and shall submit a copy of every UB-92 record to the commission or its designated agent.

(b) Each copy shall contain all of the UB-92 data elements identified in Section 6 of this administrative regulation, and shall otherwise be an exact duplicate of the original record.

(c) 100 percent of the completed hospitalizations and ambulatory encounters of patients of a hospital shall be included in the reporting to the commission and, in the event that any ambulatory encounter of a hospital patient is not recorded on a UB-92, that encounter shall be recorded on a HCFA-1500 as specified in subsection (2) of this section.

(2) Ambulatory facilities.

(a) Except as provided in subsection (3) of this section, ambulatory facilities as defined in KRS 216.270 shall record each ambulatory patient encounter on the HCFA 1500, and shall submit a copy of every HCFA 1500 record to the commission or its designated agent.

(b) Each copy shall contain all of the HCFA 1500 data elements

identified in Section 6 of this administrative regulation, and shall otherwise be an exact duplicate of the original record.

(3) Special situations. When a patient is served by a mobile health service or specialized medical technology service providing services under contract or other arrangement with a provider, responsibility for submitting a copy of the record to the commission, or its designated agent, shall reside with the entity that bills for the service.

(4) UB-82 to UB-92 transition period. In the event that the Kentucky Uniform Billing Committee's planned schedule for exclusive use of the UB-92 is not fully implemented by January 1, 1994, the commission may require any hospital to temporarily continue submitting data on the UB-82 beyond the planned period of parallel use of the UB-82 and UB-92 from October 1 through December 31, 1993 as scheduled by the committee.

(5) Mode of transmission of records.

(a) Providers with capability to make monthly submissions of records on computer-readable electronic media shall do so according to specifications prescribed by the commission.

(b) Specifications shall encompass electronic transmission by computer modem and include provisions for back up against accidental erasure or loss in the mail in the event that electronic media are delivered by mail.

(c) Providers who submit records in the form of paper copies shall either deliver the copies or send them in secure packaging by registered mail postmarked on or before the due date.

(6) Universal reporting. Hospitals and ambulatory facilities shall generate and report to the commission a UB-92 or HCFA-1500 on every patient as provided in subsections (1) through (5) of this section, regardless of whether a bill is to be generated and presented to the patient.

(7) Certification of data. Data submitted to the commission for each reporting period shall be accompanied by a letter signed by the chief executive officer of the reporting organization and certifying that the submission is believed to be complete, accurate, and in all other respects in compliance with the commission's requirements.

Section 3. Data Submission Scheduling Requirements. (1) Reporting periods. Hospitals and ambulatory facilities shall submit the required record copies to the commission for all patient discharges and encounters occurring during each calendar month, beginning with the month ending January 31, 1994, except as provided under subsection (3) of this section.

(2) Due dates. Each submission shall be due to the commission no later than forty-five (45) days after the last day of each reporting period.

(3) Quarterly reporting waivers.

(a) After June 30, 1994, the commission may grant waivers permitting providers to submit records quarterly rather than monthly. Waivers shall be available only to those providers who have demonstrated the capability to submit records on computer-readable electronic media usable by the commission and within time frames specified by this administrative regulation.

(b) The commission may revoke a waiver for failure to provide usable media by the due date.

(4) Submission of corrected records.

(a) The commission shall allow providers twenty (20) days in which to submit corrected copies of all records the commission identifies as incomplete or invalid as a result of the commission's editing procedures.

(b) The twenty (20) days shall begin on the postmarked date of the commission's mailed notice.

(c) Providers shall submit corrected copies by either electronic transmission or postmarked mailing within the twenty (20) days.

(d) Corrected records shall be fully completed as provided in Section 2(1) and (2) of this administrative regulation.

Section 4. Working Contacts. (1) Formal communications to a reporting organization from the commission shall be directed to the chief executive officer of the hospital or ambulatory facility.

(2) To facilitate staff level follow-up by commission employees in dealing with daily working details, each hospital and ambulatory facility shall report to the commission by December 30 each year the names of a designated working contact person and a back-up person, neither of whom shall be the chief executive officer, to serve as point of contact for informal working communications from the commission.

(3) If the chief executive officer, designated contact person or back-up person changes during the year the names of the replacement officer or working contact shall be reported immediately to the commission.

Section 5. Confidentiality. (1) The commission shall, as an initial step in computer processing of record copies received, arrange for the patient Social Security number on each record to be computer translated into an encoded unique record identifier which assures anonymity for the person named on the record.

(2) Immediately after this translation the Social Security number and any other data element(s) which could be used to identify the person about whom the record was created shall be deleted from the commission's data base.

(3) The encoded unique record identifier shall be permanently assigned to the record and shall be designed to permit computer linking of the record to any other record on the same individual that may exist in or be subsequently added to the commission's data base.

Section 6. Minimum Required Data Elements. (1) Hospital records. Hospitals shall ensure that each record submitted to the commission contains at least the following data elements as provided for on the UB-82 and UB-92 forms and in the Uniform Billing Training Manual, except as otherwise specified in paragraphs (b) and (c) of this subsection.

(a) Existing data elements using existing codes.

UB82 Form Locator #	UB92 Form Locator #	Data Element Label
4	4	Type of Bill
6	5	Federal Tax Number
22	6	Statement Covers Period
24	8	Noncovered Days
11	13	Patient Address
12	14	Patient Birthdate
13	15	Patient Sex
15	17	Admission Date
16	16	Patient Marital Status
17	19	Type of Admission
18	20	Source of Admission
21	22	Patient Status
28-32	32-35	Occurrence Codes & Dates, if applicable
33	36	Occurrence Span Codes & Dates, if applicable
-	23	Medical Record Number
53	47	Total Charges (by Revenue Code Category)
54	48	Noncovered Charges
57	50	Payor Identification
72	64	Employment Status Code
77	67	Principal Diagnosis Code
78-81	68-75	Other Diagnoses Code, if applicable
N/A	76	Admitting Diagnosis
N/A	77	External Cause of Injury Code (E-

		Code), if applicable
82	79	Procedure Coding Method Used
84	80	Principal Procedure Code and Date, If applicable
85-86	81	Other Procedure Codes and Date, if applicable

(b) Existing data elements with special coding instructions.

UB82 Form Locator #	UB92 Form Locator #	Data Element Label	Special Coding Instructions/ Requirements
92	82	Attending Physician ID	Line 1: License No. Assigned by Ky. Board of Medical Licensure
93	83	Other Physician ID	Line 1: License No. Assigned by Ky. Board of Medical Licensure

(c) New data elements.

New Data Element Label	Reserved Field # on Form UB82	Reserved Field # on Form UB92	Special Coding Instructions/ Requirements
Race	2	2	Line 1: Code Structure: W: White (not Hispanic) B: Black (not Hispanic) H: Hispanic I: American Indian/ Alaska Native A: Asian/Pacific Islander O: Other
Social Security #	2	2	Line 2
Birth Weight	9	11	Report birth weight in grams for those patients identified as "newborns" in Form Locator 20 "Source of Admission"
Unusual rence - Readmission	27	78	Readmission to the Occur- same facility within 30 days. Code Structure: 1: Noncompliance of medical instructions by patient resulting in readmission 2: Scheduled Readmission 3: Patient Complications from previous admission 4: Unrelated New Admitting Diagnosis
Unusual Occurrence - Nosocomial Infection	27	78	Code Structure: Y: Nosocomial infection(s) detected/reported during this admission.

(2) Ambulatory facility records. Ambulatory facilities shall ensure that each record submitted to the commission contains at least the following data elements as provided for on the HCFA-1500 form, or as otherwise specified in paragraphs (b) and (c) of this subsection.

(a) Existing data elements using existing codes.

Item #	Data Element
1	Payor Type
3	Patient's Date of Birth
3	Gender
5	Patient's Address (include zip code)
8	Patient Status
10 A,B,C	Is condition related to employment, auto accident or other accident?
18	Hospitalization dates related to current services, if applicable
21	Diagnosis or nature of illness or injury, all that apply
24A	Dates of Service
24D	Procedures, Services, Supplies
24F	Charges
25	Federal Tax ID #
28	Total Charge

(b) Existing data elements with special coding instructions.

Item #	Data Element	Special Coding Instructions
31	Signature of Physician or Supplier including degrees or credentials	License Number Assigned By Ky. Board of Medical Licensure

(c) New data elements.

New Data Element Label	Reserved Item # on HCFA-1500	Special Coding Instructions
Race//Social Security #	19	Code Structure: W: White (not Hispanic) B: Black (not Hispanic) H: Hispanic I: American Indian/Alaska Native A: Asian/Pacific Islander O: Other (Enter single - digit race code in first character position, followed by two slashes (no spaces); then enter Social Security Number in the next nine character positions (no hyphens)).

Section 7. Noncompliance and Penalties. (1) A hospital or ambulatory facility found by the commission to be in noncompliance with the provisions of this regulation shall be subject to the penalties and enforcement options, including suspension of licensure, available to the commission. A hospital or facility shall not be considered in violation if:

(a) It submits corrected copies, within the allowed period, of any records found to be deficient under Section 3(4) of this administrative regulation; or

(b) The number of records found to be deficient does not exceed one (1) percent of the total number of records required to be submitted within a reporting period.

(2) Upon a finding of noncompliance, the commission shall file a report of its findings with the Cabinet for Human Resources Office of Inspector General.

Section 8. Incorporations by Reference. (1) As defined in Section

1 of this administrative regulation, Form UB-82, Form UB-92, the UB-82 and UB-92 Uniform Billing Training Manuals, and Form HCFA-1500 are incorporated by reference.

(2) These forms and the manual may be inspected, copied or obtained at the Kentucky Health Care Data Commission, c/o Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

ROBERT L. JOHNSON, Chairman

APPROVED BY AGENCY: August 27, 1993

FILED WITH LRC: September 1, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 21, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Greg Lawther

(1) Type and number of entities affected: Approximately 300.

(a) Direct and indirect costs or savings to those affected: This regulation was drafted to minimize the potential costs to providers. While the mandated forms have not been universally utilized by all providers for all patients, they are familiar to providers and are already utilized for billing and reimbursement. Costs associated with these regulations should be mostly limited to reproduction of the computer-media copies of the forms and costs of submission. Without some actual experience of the effects of these additional requirements on providers, it is impossible to determine the increase in costs associated with this regulation.

1. First Year: The costs to initially comply with this program will be higher than would be experienced in an ongoing program. However, these costs should be minimum since existing forms and electronic computer media are to be utilized.

2. Continuing costs or savings: These costs would be that of the procurement and processing of the mandated forms and computer media.

3. Additional factors increasing or decreasing costs (Note any effects upon competition): Additional factors may include the costs associated with any increased personnel time required to prepare copies of records for the commission. There should be no effects on competition since all providers of the same class will have to comply with these requirements.

(b) Reporting and paperwork requirements: The UB92 and HCFA 1500 forms as described in the regulation. Additional paper handling will be minimal because most providers convert the forms to electronic computer media.

(2) Effects on the promulgated administrative body: The Kentucky Health Care Data Commission will need to compile and process these submissions. There is a legislative mandate set forth in KRS 216.270-216.287.

(a) Direct and indirect costs or savings: The commission has a budget of three million dollars. It is not yet possible to determine how much of these budgeted funds will be utilized since the commission has only been in operation for three weeks.

1. First year: This is not possible to determine at this time.

2. Continuing costs or savings: This is not possible to determine, and will depend on the outcome of the health care reform process.

3. Additional factors increasing or decreasing costs: Additional factors will depend on the outcome of the health care reform process.

(b) Reporting and paperwork requirements: This commission will report to the Legislature and the citizens of the Commonwealth in accordance with statutory provisions.

(3) Assessment of anticipated effect on state and local revenues: No anticipated effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statutes require this regulation and this is the most cost effective and timely way to comply with this mandate.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No conflict exists.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation is required to affect certain classes of providers and should do so as equitably as possible.

CABINET FOR HUMAN RESOURCES
Department for Mental Health and Mental Retardation Services

908 KAR 2:080. Quality assurance standards for supported living services.

RELATES TO: KRS 210.770 to 210.795

STATUTORY AUTHORITY: KRS 194.050, 210.795(4)

NECESSITY AND FUNCTION: KRS 210.795 authorizes the Department for Mental Health and Mental Retardation Services, in cooperation with the State Supported Living Council, to promulgate administrative regulations to establish standards to monitor the quality of service delivery of supported living services. The purpose of this administrative regulation is to establish monitoring standards for supported living services.

Section 1. Definitions. (1) "Client" means a person with a disability as defined in KRS 210.770(2).

(2) "Agency provider" means an incorporated establishment selected by a client to provide services under the supported living plan.

(3) "Individual provider" means an individual, not employed by an agency, selected by a client to provide services under the supported living plan.

(4) "Department designee" means an agency designated by the Department for Mental Health and Mental Retardation Services to perform functions of the department regarding supported living services.

(5) "Client designee" means an individual or representative of an agency designated by the client to perform selected functions on behalf of the client.

Section 2. Monitoring. (1) Supported living services shall be monitored by the following:

(a) The Department for Mental Health and Mental Retardation Services or its designee shall monitor clients receiving ongoing services within ninety (90) days of the award of the funding agreement, thereafter annually.

(b) An agency provider of ongoing services shall conduct annual monitoring consistent with the agency's internal monitoring process.

(c) The Department for Mental Health and Mental Retardation Services or its designee shall monitor one (1) time services received by a client within three (3) months of the completion of the service. Monitoring may be accomplished by telephone or a personal visit.

(2) Monitoring of ongoing services shall include a:

(a) Home or site visit;

(b) Meeting with the client and their designee, when appropriate; and

(c) Review of the client's service plan and appropriate provider and client records.

(3) All monitoring shall:

(a) Assess the appropriateness of the client's service plan and the services provided;

(b) Determine if the service plan is being implemented correctly; and

(c) Identify any modifications, unmet needs, or corrective action items.

(4) Documentation of expenditures related to the provision of supported living services shall be recorded.

(a) Agency providers shall record documentation of expenditures on their standard billing forms.

(b) Clients or individuals who are not agency providers shall record documentation of expenditures on the supported living documentation of expenditures form.

(5) The supported living documentation of expenditures form is hereby incorporated by reference. A copy of the form may be obtained at the Department for Mental Health and Mental Retardation Services, Division of Mental Retardation, Fairoaks Lane, Leestown Square, Fourth Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(6) A report of monitoring visits shall:

(a) Be written by the Department for Mental Health and Mental Retardation Services or its designee;

(b) Document findings;

(c) Identify corrective action that is needed; and

(d) Be submitted to the individual or agency provider and to the client or their designee.

(7) Corrective actions shall be completed within the period of time identified in the written report and the appropriate steps documented.

(8) Grievances shall be submitted to the Chairperson of the State Supported Living Council, Department for Mental Health and Mental Retardation Services, Division of Mental Retardation, Fairoaks Lane, Leestown Square, Fourth Floor, Frankfort, Kentucky 40601. The person filing the grievance shall be notified by the council within thirty (30) days of what action the council has taken.

DENNIS D. BOYD, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: August 6, 1993

FILED WITH LRC: September 8, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for October 21, 1993, at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by October 16, 1993, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Douglas Riddell

(1) Type and number of entities affected: Citizens of the Commonwealth affected by this regulation include those persons with a disability, physical or mental impairment, and other substantial limitations as defined in KRS 210.770.

(a) Direct and indirect cost or savings to those affected: At the end of FY '93 ending June 30, 1993, $499,289 was allocated to eligible individuals for supported living services. Those individuals receiving supported living services will experience direct cost saving as a result of the Commonwealth now purchasing those services previously paid for by the consumer. Indirect savings will occur as a result of prevention services being provided which heretofore were either not available or not affordable by the consumer.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Documentation of expenditures related to the provision of services shall be recorded by the person and designee receiving supported living services.

(2) Effects on the promulgating administrative body: The Department for Mental Health and Mental Retardation Services will be responsible for promulgating administrative regulations and establishing quality assurance standards to monitor the quality of supported living services. A review of all clients receiving ongoing services will occur within 90 days of the award of the funding agreement and annually thereafter within the home of the consumer or at the site of service delivery. A written report of the findings from the review will be prepared and provided to the individual and designee receiving supported living services.

(a) Direct and indirect costs or savings: The General Assembly of the Commonwealth of Kentucky in its regular session of 1992 enacted House Bill 447 and appropriated $500,000 for the first year of the biennium and $1,000,000 for the second year.

1. First year: The supported living program was implemented in FY '93. 95 eligible individuals received services at a cost of $499,289.

2. Continuing costs or savings: The projected amount of funds to be allocated for FY '94 is $1,000,000. It is also projected that 118 eligible individuals will receive supported living services.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(3) Assessment of anticipated effects on state and local revenues: There are no anticipated effects on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: National trends are allowing individuals to assume more control over the services they need while permitting the person to remain in his/her home/community rather than having to move or be served in another location. Supported living is a new concept to service provision therefore no alternatives were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations or government policies which are in conflict with this regulation nor does it overlap or duplicate any other regulations.

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? No. There is no group, individual, agency, or organization which receives special treatment or has specific requirements made to participate in supported living services.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the September 3, 1993 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Friday, September 3, 1993, at 10 a.m. in Room 149 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the August 2, 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: Senator Susan D. Johns; Senator Richard "Dick" Roeding; Representative Robert R. Damron; Representative Jeff Buis; Paul P. Borden, Diana Barber, KHEAA; David H. MacKnight, J. Michael Noyes, John Cubine, Auditor of Public Accounts; Dan Tuttle, Local Government; Dave Nicholas, Division of Occupations & Professions - Geology Board; Wes Faulkner, William Schmidt, Board of Medical Licensure; Paul Stone, Nathan Goldman, Board of Nursing; Bill Pettus, Board of Podiatry; Donna Greenwell Dutton, Department of Agriculture; John Hornback, Gerry Ennis, Millie Ellis, Kenneth Hines, Hank Wiseman, Division of Air Quality; Carl Campbell, Jim Villines, Dave Rosenbaum, Department for Surface Mining; Louis Smith, Department of Corrections; Sandy Pullen, John Carr, Transportation Cabinet; Kevin Noland, Scott Trimble, Judy Tabor, Joanne Brooks, Preston Lewis, Akeel H. Zaheer, Maureen Fitzgerald, Debbie Hendricks, Rita Byrd, Donna DeSpain, Nancy W. Sander, Nancy LaCount, Chris Thacker, C. F. Gobert, Kenneth Warlick, Donald P. Cross, Department of Education; Arnold Wilson, Tara Parker, Beverly H. Haverstock, John Horton, Workforce Development Cabinet; David Johnson, Wesley Gearheart, Department of Mines & Minerals; Greg Lawther, Cliff Jennings, Bill Griffin, John Gray, Reginald Finger, Rice Leach, Mark Cornett, Cathy Mobley, Masten Childers, Stanley Stratford, Jayne M. Arnold, Brooke Thomas, Karen Doyle, Michael Cheek, Lydia Roberts, Ked Fitzpatrick, Anita Moore, Cabinet for Human Resources; James H. Smith, Consultant Engineers Council of KY; Robbie Bond, Southeastern Displays; Maureen Hall, Franklin County Schools; Eve Proffitt, Fayette County Schools; Anne C. Weaver, Shelby County Public Schools; Marilynn Girdler, Pulaski County Board of Education; Judy Mallory, Oldham County Board of Education; Keith Stephens, U of K; Debra Miller, Child Care Policy Council; Janet Ashley, Jim Cagey, James H. Newberry, Jr., Community Montessori School; Linda Locke, Linda Meckler, Libby Grever, Community Coordinated Child Care of Louisville; Carolyn Covington, Child Care Council of KY; Oliver N. Barber, Jefferson County Child Care Association; Bonnie Sullivan, Kentucky Child Care Association; Don Manning-Miller, Eastern Kentucky Child Care Coalition; Peggy Jackson, Kentucky Association for Community Action; Sandy Hamilton, Children's Home of N. KY; Suzanne Monk, Childrens House Montessori; Marilyn W. Coffey, Casey County Family Resource Center; Jack Kelly, Ardis Dee Houen, Kentucky Medical Association; Jean Miller, Jim Carloss, Kentucky Speech-Language-Hearing Association; Dr. Tom Ballowe, Pam Stephens, CASE; Marie Allison, Joni M. Swift, Beth L. Jones, Mark A. Hobbs, Mary Robertson, Vicki Henley, CHADD; Janet G. VanName, PRADD; Charlie Muntz, Central KY Special Education Coordinators; Sharon Kieta, KY Association for Psychology in the Schools; Teresa Howard Wasson, KY Council for Exceptional Children; Barbara Pollard, KY Federation of Families for Childrens Mental Health; Paula Ott, Bluegrass Model Educational Cooperative; Ruth A. Morgan, Barren River LTC Program; Mary Robertson, Ombudsman Advisory Commission; Vivian G. Craig, Green River Ombudsman Advisory Council; Mack Morgan, Nursing Home Ombudsman Agency of the Bluegrass; Treasa Howard, Our House Creative Child Care; Susan Davis, Western Family Resource Center; Jack McLee, Educare Learning Center of Lexington; Marie Alagia Cull, Educare/Alpine Village Day Care Centers/KY Association of Health Care Facilities; Ted Estes, Alpine Village School; Sister Patricia M. Hill, Marlene Greenwell, Nazareth Montessori Children Center; Sister Delores Kemper, Ursuline Montessori School; Jack Brock, Nancy Carol Infant Care; Marie Botlo, Snow White Preschool; Mike & Brenda Sink, The Village Child Care Ct.; Violet Holladay, Shelenry Nursery & Child Care; Iva Sergent, J-Town Preschool Inc./JCCA; Karen Hellard, Edu-Care School; Jacquin Pittard, Milk and Honey Day Care; Bess Howard; John H. Bruce; Cathryn Knepper; Tracey Corey; Carolyn Arnett; Cindy Rausch.

Press: Nicole Heumphreus, Lexington Herald Leader; Angela Davis, Ken Harvener, Channel 27; Dick Brown, Wave 3; Bill Tingley, Channel 41; Heather Braun, KY Radio News Network; Lisa Summers, The State Journal; Tim Weldon, WLEX; Sharon Roark, WKED.

LRC Staff: Greg Karambellas, O. Joseph Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

The Subcommittee determined that the following administrative regulations did not comply with statutory requirements:

Transportation: Administration

600 KAR 1:100. Professional engineering and related services procurement. Agency personnel: (1) acknowledged that the requirement in Section 4(12) that interested firms annually submit qualification and performance date on or prior to their anniversary date of prequalification, violated KRS 45A.835(1) which required submission of the data each Commonwealth fiscal year; and (2) stated that it had spoken with the sponsor of the original legislation for legislation to be introduced at the next Regular Session of the General Assembly to amend KRS chapter 45A.

The Subcommittee approved a motion that this administrative regulation was deficient because it did not conform to the provisions of KRS 45A.835(1.)

Department of Education: Office of Education for Exceptional Children: Exceptional and Handicapped Program

See further discussion on these administrative regulations below. 707 KAR 1:170, 707 KAR 1:180, 707 KAR 1:190 and 707 KAR 1:200 were found deficient by the Subcommittee pursuant to KRS 13A.120(2)(i) because, as amended, these administrative regulations modify and vitiate state law and legislative intent.

Chairman Kerr pointed out that : (1) when the General Assembly is not in Regular Session, it cannot stop an administrative regulation from going into effect; (2) the Subcommittee cannot change an administrative regulation without the agreement of the agency; (3) unless the deficiency found by the Subcommittee is removed, these administrative regulations will sunset or become unenforceable at the conclusion of the next Regular Session of the General Assembly; (4) if the agency wishes to have these administrative regulations remain in effect beyond the adjournment of the next Regular Session of the General Assembly, the administrative regulations will have to be passed into law by the House and the Senate.(5) the Department intends to work with the various individuals that testified at the hearing to attempt to come up with an appropriate compromise.

Kevin Noland stated that he: (1) understood the concern to be primarily with 707 KAR 1:200; and (2) even though the four administrative regulations were found deficient, felt the federal government would be satisfied with the administrative regulations as passed.

Representative Bruce stated that: (1) the Department needed to work with the interested parties concerning all four administrative regulations found deficient, after which the Subcommittee would reconsider the four deficient administrative regulations; (2) the administrative regulations would go into effect even though found

deficient by the Subcommittee; and (3) if the deficiencies are not removed, it may be appropriate for the General Assembly to look at the issues.

707 KAR 1:170. Identification of children and youth with disabilities.

707 KAR 1:180. Due process procedures. This administrative regulation was amended to: (1) define "Independent Evaluation", pursuant to KRS 13A.222(4)(a) and (e); (2) cross reference various sections within the administrative regulation for clarity, pursuant to KRS 13A.222(4)(a); (3) Insert "shall" for mandatory obligations pursuant to KRS 13A.222(4)(b); (4) allow persons other than attorneys to represent parents at due process hearings; (5) prohibit parties from waving opening statements; (6) add a new section to allow placement of visual and hearing impaired students at the Kentucky School for the Blind or Kentucky School for the Deaf.

707 KAR 1:190. Evaluation. This administrative regulation was amended to:(1) cross-reference various sections within the administrative regulation for clarity, pursuant to KRS 13A.222(4)(a); and (2) provide for an additional assessment cognitive functioning before determining disability.

707 KAR 1:200. Eligibility of children and youth with disabilities. This administrative regulation was amended to: (1) define "Academic processing deficits", "Basic Reading Skills", "Fluency disorder", "Language disorder", "Listening comprehension", "Mathematics calculation", "Mathematics reasoning", "Oral expression", "Reading comprehension", "Speech sound production and use disorder", "Voice disorder", "Written expression"; and (2) include Department amendments rewriting Section 5, Communication disability; Section 7, Emotional-behavioral disability; Section 11, Other health impaired; Section 12, Orthopedic impairment or physically disabled; Section 13, Specific learning disabilities; and Section 16, Developmental delay.

Ms. Jean Miller from the Kentucky Speech Language Hearing Association stated that: (1) a task force was formed by the Kentucky Department of Education two years ago to write eligibility guidelines students in public schools with communication disorders; (2) the guidelines were completed in January 1993; (3) 707 KAR 1:200, as amended in July, does not adequately represent the intentions of the task force; (4) the amended administrative regulation proposed by the Department does not adequately identify students in the public schools with communication disorders.

Subcommittee staff pointed out that: (1) Ms. Miller's concerns relate primarily to the amendments to the Communication Disability Section proposed by the Department on July 22, 1993; (2) the language contained in the amendment was not proposed for adoption at the public hearing; and (3) many of the sections of this administrative regulation have been deleted and rewritten by the Department since the public hearing.

Workforce Development Cabinet: Instructional Programs

780 KAR 4:030. Technical degree requirements for postsecondary students. Mr. Keith Stephens, University of Kentucky Community College System, stated that (1) he was representing the Chancellor of the Community College System, Dr. Ben Carr; (2) the community college system and the Council on Higher Education were concerned over the use of the term "technical degree" could confuse students and the business community; and (3) a degree is normally considered to be an award for the completion of the requirements for an associate, baccalaureate, or doctoral degree. Mr. Stephens gave the Subcommittee position papers on the issue of the use of the word "degree" by the technical schools prepared by Dr. Carr.

In response to questions by Chairman Kerr, Mr. Stephens: (1) stated that the objection was to the use of the word "degree"; (2) suggested that the technical schools use the word "certificate"; (3) stated that the community colleges used "associate degree" for completion of programs similar to those offered by the technical schools; and (4) believed that the word "certificates" had not been used by the technical schools in the past. In response to a question by Chairman Kerr on the time it takes to earn a technical degree, agency personnel stated that: (1) the technical schools offered "certificates" as well as diploma level courses in all their programs; (2) the amount of time required varied with and depended upon the specific program, with licensed practical nursing taking about a year and electronics technology taking from one to two years depending upon the student's level of previous education and training.

Senator Huff asked for an explanation of the difference between the "certificate", "technical degree", and "diploma". Agency personnel stated that a: (1) diploma meant a student had completed all courses offered in the particular program area; (2) certificate meant the student had not completed all courses, although he had completed certain elements which was recognized by the award of a certificate; (3) technical degree usually took two years, and meant that a student had completed the more technical courses that the technical schools had upgraded in order to make students more employable by industry; and (4) industry had requested the development of the technical degree program. Senator Huff asked whether the Department had requested the Council for assistance in developing a two year program with the award of an associate degree, such as already was offered by the community college system. Agency personnel stated that: (1) the governing statutes prohibited the award of any degree, such as a bachelor or associate degree, that was offered by the college system; and (2) did not believe that a technical degree was the same thing as an associate degree.

Representative Bruce stated that the: (1) Department should work more closely with the universities; and (2) legislature should consider the issue of the types and names of degrees offered by the technical schools and the community colleges.

The comments of Senator Smith and agency personnel with regard to 780 KAR 4:030 apply to this administrative regulation.

The Subcommittee approved a motion that this administrative regulation was deficient because the use of the term "degree" violated the provisions of KRS 151B.115 and other applicable sections of KRS Chapter 151B.

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:004. Certificate of need process. In response to a question by Senator Kafoglis, agency personnel stated that a certificate of need is valid for three years, and progress on completion of the project for which it was issued is checked every six months during the three year period. Senator Kafoglis stated that: (1) three years was too long a period for a certificate of need; (2) two years was a sufficient period; (3) certificates of need should not be traded or sold; (4) the certificate of need process has been abused; (5) the health needs of the people have not been met; (6) the holders of certificates of need too often have ignored their responsibilities; (7) the severe shortage of nursing home beds was not being corrected by granting certificates of need to people who do not construct the needed nursing home facilities; (8) the legislative intent was for projects to be completed in an expeditious manner; and (7) the certificate of need process needed to be examined by the General Assembly.

It was pointed out that representatives of Barren River, Green River, and Blue Grass Area Development Districts: (1) agreed with the amendments to this administrative regulation, particularly with the amendments to Section 10; and (2) that they had not addressed the three year life of a certificate of need.

Representatives of the Kentucky Association of Health Care Facilities (KAHCF) stated that: (1) they agreed to the amendments; (2) conceded that three years may be too long a period for some, but that circumstances, such as financing problems due to changes in the lending rules that resulted from the recent savings and loan problems which require financing from sources other than the sources anticipated by a holder; (3) because of the moratorium on long-term care beds, once a certificate of need was revoked, it could not be restored

and the need would not be met; (4) only three or four of the nursing home certificates of need, that were not granted until June, 1991, had not started construction; (5) some of these were delayed because of subsequent required filings of certificates of need because of cost escalations; and (6) the Cabinet scrutinizes progress each six months, and has revoked certificates of need.

Senator Kafoglis stated that: (1) he had been contacted by the Aging Council in his district which, he understands, believes that the three year period for a certificate of need is too long, and that two years would be sufficient; (2) certificates of need have been traded and sold; (3) many believe that the holders of certificates of need have not acted in good faith; and (3) the process needs to be more rigorously enforced. Senator Kafoglis informed agency personnel that if this administrative regulation was amended to provide for a two year period, he would not object to the administrative regulation.

In response to a question by Senator Huff, representatives of the KAHCF stated that nursing homes under construction would not be affected if this administrative regulation were found deficient because, even if there is no administrative regulation in effect, April 15, 1994, existing certificates of need could not be revoked.

This administrative regulation was amended as follows: (1) Various sections, to: (a) conform to the format requirements of KRS 13A.220(4) and 13A.222(4), (b) establish deadlines, and (c) incorporate forms; (2) Section 1, to: (a) cross reference the statutory definition of "affected persons"; and (b) add a definition for "emergency circumstances"; and (3) Section 10, to establish, clearly, that a certificate of need shall be revoked, on thirty days' notice subject to a request for a hearing, if the: (a) items required to be completed in each six month period are not completed; and (b) failure to complete: 1. was not due to emergency circumstances; 2. could have been reasonably anticipated and avoided by the holder of the certificate of need; and 3. was the result of action or inaction of the holder of the certificate of need.

The Subcommittee approved a motion to find this administrative regulation deficient for failure to comply with legislative intent to meet health needs by completing projects in an expeditious manner.

Department for Social Services: Day Care

905 KAR 2:130. Child care discipline. This administrative regulation was amended as follows: (1) STATUTORY AUTHORITY paragraph: The citation of "KRS 199.898(2)" was added after "KRS 199.896(2)"; (2) NECESSITY AND FUNCTION paragraph, by deleting "facilities", and inserting "provided by licensed facilities or certified family child care homes" after "child day care"; and (3) Section 1, by: (a) inserting in the Section title, after the word "Discipline"," Guidelines for"; (b) in Line 3, deleting the words "The facility shall"; and inserting "Facilities licensed pursuant to 905 KAR 2:090 and family child care homes certified pursuant to 905 KAR 2:100 shall".

Senator Huff asked why the Cabinet: (1) deleted the language relating to physical discipline from 905 KAR 2:100, Section 11(7); and (2) elected not to include the same language in 905 KAR 2:130, the administrative regulation governing discipline. He acknowledged that he viewed the Cabinet's decision as a good faith effort, but believed it was also a strategy to have the deficiency removed from 905 KAR 2:100.

Senator Huff reminded the Cabinet that the: (1) General Assembly has, on several occasions, addressed the issue of corporal punishment; (2) provisions of KRS 503.110 permit the use of physical discipline; (3) Kentucky Attorney General and the Kentucky Department of Education ("DOE") relied on KRS 503.110 after the Administrative Regulation Review Subcommittee had found deficient a DOE administrative regulation prohibiting the use of corporal punishment; (4) Department was effectively precluded, by KRS 503.110, from prohibiting physical punishment when the deficient administrative regulation expired; and (5) Cabinet appears to impose its policy prohibiting physical punishment pursuant to the provisions of 905 KAR 2:130, Section 1(1): "No subject children to harsh or physical discipline".

Senator Huff asked if the Cabinet interprets either of these terms "harsh", or "physical discipline", to include corporal punishment. The Cabinet agreed the phrase would include the use of corporal punishment.

Senator Huff asked why the Cabinet had decided not to insert additional descriptive language in 905 KAR 2:130, paralleling the language deleted in 905 KAR 2:100, Section 11(7). The Cabinet stated that it believed the provisions in 905 KAR 2:130, Section 1, were clear and comprehensive, and included "shaking, pushing, shoving, pinching, slapping, biting, kicking and spanking".

Senator Huff asked if the Cabinet's interpretation of KRS 503.110 was that the statutory provision applied only to criminal offenses. Deputy Secretary Childers affirmed that the Cabinet maintains such an interpretation.

Senator Huff asked cabinet personnel if the Cabinet would agree to an amendment to 905 KAR 2:130, Section 1, to delete the word "discipline" and insert the word "abuse". The Cabinet declined to make the amendment.

Senator Huff moved that this administrative regulation be found deficient, on the grounds that it did not comply with statutory authority because the General Assembly had clearly spoken on the issue, particularly as evidenced by all staff in day care centers, and permitted physical discipline in certain circumstances. The Subcommittee approved the motion.

Senator Kafoglis asked Cabinet personnel to respond to the finding the administrative regulation deficiency.

Deputy Secretary Childers stated that: (1) the issue is whether the Cabinet should allow the use of corporal punishment in regulated facilities; (2) he acknowledged that Senator Huff's recommendation, that the phrase "harsh or physical discipline" be further defined, was a good suggestion; (3) the Cabinet has determined it would be very difficult to define such actions in regulatory terms; (4) the impact of such a finding of deficiency would be to prohibit the Cabinet from repromulgating the same or similar administrative regulation regulating corporal punishment, if 905 KAR 2:130 expires upon sine die of the next Regular General Assembly without the General Assembly enacting the provisions relating to corporal punishment into statute; (5) the practical result would be that the Cabinet would be precluded from prohibiting the use of physical punishment in Kentucky's day care centers, and would only be restricted to regulating unreasonable or abusive use of physical punishment.

Senator Kafoglis asked if this would permit the use of physical punishment by all staff in day care centers, not only providers or operators.

Deputy Secretary Childers responded that there were several schools of thought within the Cabinet, with the majority in support of the Cabinet's policy, and some sharing the views of Senator Huff. He added that physical discipline may be appropriate when children are entrusted to the care of qualified, formally trained staff who are specialized in how to deal with physical disciplinary matters.

Representative Bruce was assured that the prohibition applies only to day care centers and not to schools. The Cabinet affirmed.

Senator Huff stated that: (1) although the administrative regulations pertain only to day care facilities, the issue of corporal punishment is an important national issue; (2) he believed that providers and staff in day care centers throughout Kentucky are not the type of persons who will abuse and misuse this type of responsibility; (3) the Cabinet is regulating many of these centers out of business; (4) the class of people running many of these facilities are the kind who would be responsible in disciplining children; and (5) he felt it was important the Subcommittee follow the legislative intent expressed by the General Assembly in KRS 503.110 and show the Cabinet that this is an issue worth their application and attention.

Deputy Secretary Childers responded that part of the Cabinet's rationale for the policy was that: (1) from a legal standpoint, he agreed that the General Assembly has recognized the caliber of

training and expertise that are held by those professionals who teach in Kentucky schools; (2) the training of some staff, who would make disciplinary decisions in day care facilities, is not on parity with professionals who make these decisions in elementary and secondary schools.

Senator Huff asked if the training required by the Cabinet for day care providers and staff could include: (1) instruction in the use of physical punishment; (2) establishing disciplinary actions that would be deemed excessive; and (3) a policy and procedure established detailing the use of such discipline.

Deputy Secretary Childers stated that: (1) the Cabinet includes instruction on discipline as a part of the required training; (2) to add a full curriculum would require more training hours, additional staff and result in additional costs to providers and parents; (3) the curriculum for teachers in the Kentucky's schools is different from the training requirements set by the Cabinet for day care staff; (4) training for teachers includes a comprehensive curriculum, including psychology, behavioral studies programs, that address all aspects of discipline which may enter into a day-to-day judgment call; (5) the Cabinet understands that there is an honest difference of opinion over the policy.

Senator Huff stated that a modification of the Cabinet's training program, to include instruction in physical discipline, is a viable way to administer such discipline in day care centers.

Chairman Kerr stated that the term "physical discipline", found in 905 KAR 2:130, Section 1(1), does not make a reference to "corporal punishment". He asked if it was the Cabinet's position that the term "physical discipline", would not include discipline such as "time-out", wherein the child is placed in care away from toys or other children. Deputy Secretary Childers responded that the term would not include such discipline as "time-outs".

Some providers stated that they were opposed to the use of corporal punishment in day care facilities and, as parents , would not want such punishment administered. Senator Huff thanked them, and stated that he agreed that parents should have a choice in granting written permission for a provider to physically punish their child.

In support of Senator Huff's position, Chairman Kerr stated that when parents are paying for child care services, they should have the right to delegate responsibility to a provider for the discipline of their children. He added that if the parents learn that a provider, or their staff, has abused their children, they are always free to remove their children from the center.

Senator Smith expressed concern over the language in 905 KAR 2:130, Section 1. He objected to the prohibition against corporal punishment, and stated that: (1) the Cabinet fails to consider the "amount" of time a child is in a day care center; and (2) many school age children have discipline needs, and need to learn discipline at a young age.

Deputy Secretary Childers reiterated that the Cabinet agrees that young children need quality discipline, and that the Cabinet must draw the line short of physical contact, including spanking.

Senator Johns stated that Senate Bill 211 included the Child Care Bill of Rights. She added she: (1) was the author of Senate Bill 211, and the intent and express language of the Bill of Rights are that "children shall be free of physical, mental and verbal abuse"; (2) spoke on behalf of many of Kentucky's day care providers, who stated that they do not want the responsibility of disciplining children by physical means; and (3) believed that allowing centers to use such discipline will lead to many complications and problems throughout Kentucky's day care facilities.

Chairman Kerr stated that a provider would not have to assume this responsibility if it chose not to, and that many providers would not use physical discipline without the signed permission of a parent in the first instance. He acknowledged that some parents would not want their children physically disciplined by day care providers. Chairman Kerr noted that: (1) the Cabinet also regulates church day care centers; (2).it is important to remember that many parents, such as those in Senator Huff's church, have strong religious beliefs concerning discipline, and believe "spare the rod, spoil the child".

Representative Bruce thanked Deputy Secretary Childers for the Cabinet's good work in promulgating the administrative regulations. Chairman Kerr also commended the Cabinet and Deputy Secretary Childers for their hard work and willingness to work with the Subcommittee members.

The Subcommittee approve a motion to find this administrative regulation deficient.

The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Congressional Teacher Scholarship Program

11 KAR 10:010. Paul Douglas teacher scholarship program. This administrative regulation was amended to: (1) comply with: (a) KRS 13A.010(2), by inserting the word "administrative" before the word "regulation"; (b) KRS 13A.222(4)(b), requiring "shall" to express a duty or obligation by deleting "must" and inserting "shall" in Section 3, line 2; and (2) correct a cross-reference to another administrative regulation in Section 3(2), line 3.

11 KAR 10:020. Deferment and reduction of repayment. Section 2(4) of this administrative regulation was amended to insert a new subsection (5) before the last sentence of the section.

Auditor of Public Accounts: Audits

45 KAR 1:070. Technical audit bulletins. The provisions of KRS 66.480(2) do not require a county official to invest public funds in an interest bearing account. An objection had been raised to the Technical Audit Bulletins that this administrative regulation incorporated by reference, because they provided that the failure to invest public funds in interest bearing accounts would subject county officials to an audit comment. However, the Auditor believed that the requirement established in KRS 43.070(1) for the Auditor to audit county officials in order to "determine whether any...irregular, or unsafe handling...of revenue or other improper practice of financial administration has occurred", permitted the Auditor to comment upon the placement of public funds accounts that do not bear interest.

This administrative regulation was amended as follows (1) amend the title to more specifically give notice of its subject matter; (2) amend Section 1 to define "audit comment" and to provide that an audit comment shall contain the determinations required by the provisions of KRS 43.070(1); and (3) insert the words "or examinations" after the word "audits".

Board of Medical Licensure

201 KAR 9:310. Continuing medical education. This administrative regulation was amended as follows: (1) Sections 1(4) and (5), to comply with the drafting requirements of KRS 13A.222(4)(c) and (j), prohibiting the use of a slash to separate alternatives and providing that a masculine pronoun includes the feminine, respectively; and (2) Section 1(6), to comply with the format requirements of KRS 13A.222(4)(a).

201 KAR 9:315. HIV/HBV infection control for physicians. This administrative regulation was amended as follows: (1) STATUTORY AUTHORITY paragraph, by deleting "KRS CHAPTER 13A"; and (2) Sections 2 and 3, to conform to the drafting requirements of KRS 13A.220(4) and 13A.222(4)(a).

Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. An objection had been raised to the deletion of the requirement for the permission request to search a visitor's vehicle in item 13, page 5, CPP 9.8, and the following policies were questioned: (1) the request for a visitor to leave, if it was felt a crime had been, or was in the

process of being, committed; and (2) on page 6, CPP 9.8, on the method of certification for dogs and handlers certified for drug or explosive detection.

In response to questions by Representative Yates, agency personnel stated that: (1) if there is a question or possibility that contraband is being smuggled in, a visitor will be asked to sign a search consent form; (2) although the Department is not required by statute to make the request, this procedure insures order and provides documentation for prosecution if prosecution is necessary; (3) if the Department suspects a crime but does not have information to meet probable cause requirements, ending the visit is the best solution; (4) there was no bodily penetration during a strip search; (5) body cavity search is done by trained medical personnel; and (6) strip and body cavity searches in these policies relate only to inmates at penal institutions and the question of visitor introduction of contraband to the penal institution, not to searches incident to arrests or the arrests of minors for traffic violations.

Agency personnel agreed with Chairman Kerr's statement that, although it did not include penetration, the definition of "strip search" included visual inspection of bodily cavities.

This administrative regulation was amended to clarify that the method of certification for dogs and handlers certified for drug or explosive detection was that they have been trained by local or state enforcement agencies.

501 KAR 6:060. Northpoint Training Center. This administrative regulation was amended, in policy NTC 08-05-02, item 6, page 7, to correct spelling.

Transportation Cabinet: Property Acquisition and Uniform Relocation

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet. Sandy Pullen, representing the agency, requested a technical change in Section 11(10)(a) and (11)(a). This was in response to a staff comment and is a grammatical change for clarity.

Department of Vehicle Regulation: Motor Vehicle Tax

601 KAR 9:085. Procedures for becoming a certified motor vehicle inspector. Ms. Pullen requested several technical changes in response to staff comments. These amendments include grammatical changes for clarity. One change in Section 1(1) was to comply with the drafting requirements of KRS Chapter 13A concerning the use of a form. The form was not specified by name. The agency requested that the "form" be deleted. The administrative regulation now requires only that the information sought be provided.

Department of Education: Office of Learning Programs Development: Office of Learning Support Services

704 KAR 7:090. Homeless children education program. This administrative regulation was amended to: (1) comply with KRS 13A.222(4)(b), requiring "shall" to express a duty or obligation, by: (a) deleting "is" and inserting "shall be" in lieu thereof in Section 3; (b) in Section 3(6), delete "No policy of the school district", and insert "School district policy shall not" before "delay or deny"; and (2) add a new Section 7, to incorporate "'Special Amendment to School Data Form for Homeless Children/Youth' and 'Homeless Children and Youth Education Program - Educational and Related Services for Homeless Students Grant Application'" forms that are referred to in Section 5(2) and 6(3).

704 KAR 7:120. Home or hospital instruction. Kevin Noland appeared, representing the Cabinet, and requested an amendment in response to a staff comment. He requested that a definition be added to Section 1 for the term "local health personnel". In Section 6 the "Application for Home/Hospital Instruction, June 1993" form was specified and incorporated by reference, in compliance with the requirements of KRS Chapter 13A regarding the use of a form.

Education Professional Standards Board

704 KAR 20:120. Emergency certification. This administrative regulation was amended, in Section 1(4)(b), to delete a reference to "forms provided by the Office of Teacher Education and Certification."

Office of Education for Exceptional Children: Exceptional and Handicapped Program

Kevin Noland, Department of Education, stated that: (1) each of these administrative regulations: (a) deal with special education; (2) the special education administrative regulations have been changed because of a deficiency report from the United States Department of Education; (3) public input has been substantial; (4) the special education area is quite complex and is funded by 44 million dollars from the federal government; (5) these administrative regulations attempt to comply with federal mandates and correct the deficiencies found by the federal government; (6) funding under the Individuals with Disabilities Act is contingent upon the promulgation of the administrative regulations before the subcommittee; (7) the promulgation of these administrative regulations began 11 months ago with various interest groups commenting and various revisions of the administrative regulations being made even prior to filing; (8) after filing the administrative regulations, a public hearing was held and many excellent oral and written comments were received; (9) technical changes were made after the public hearing in the statement of consideration and substantive changes were taken back to the Board of Education for their approval; (10) while the department tried to please everyone with the changes, its primary focus was to comply with the federal mandate; (11) the department has no flexibility to further change these administrative regulations because the federal government is pressuring the department to move forward; (14) the department is willing, however, to continue to work with the various groups to further improve these administrative regulations in the future.

Lois Adams Rogers, Deputy Commissioner for Learning Support Services, stated that: (1) it is unusual to have all the administrative regulations dealing with Special Education before the subcommittee, and that the reason for considering all the administrative regulations at once is to bring them into compliance with, Public Law 94-142, the Individuals with Disabilities Education Act (IDEA); and (3) the federal government required the department to clarify the requirements of the federal act under state law.

In response to a question by Representative Bruce, Subcommittee staff stated that the questions raised concerning some of the administrative regulations required the subcommittee to decide if these administrative regulations comply with statutory authority and the intent of the General Assembly.

Marie Allison, parent of a child with Attention Deficit Disorder and a member of a group called Children with Attention Deficit Disorder (CHADD) of the Bluegrass, stated that: (1) the purpose of CHADD is to assure that children with Attention Deficit Disorder (ADD) are properly served in the public schools; (2) children with ADD in Kentucky are not being properly served; (2) the administrative regulations do not meet federal requirements, resulting in children with ADD not being properly screened, identified and evaluated; (3) recommendations were made through the public hearing process to include ADD under the disability category of "Other Health Impaired"; (4) classifying children with ADD under the disability categories of "Learning Disabled" or "Emotionally Disturbed" may be improper because many of the children have a health impairment that requires special education services; (5) a September 16, 1991 memorandum from the United States Department of Education allows for the identification of children with ADD under the category of "Other Health Impaired"; (6) the referral process under these administrative regulations is improper because parents are not being told they have the right to request evaluations of their children to determine if ADD is the cause of the child's problems in school; (7) parents are having to go outside the school system and have separate evaluations to determine if their child has ADD, and if ADD is causing a learning problem; (8) once children are determined to have ADD by the parents, the school system is not informing the parents that they have a right to have the child evaluated by the school; (9) all parents in

every school should be told that: (1) they have the right to have their child: (a) screened for ADD; (b) evaluated for ADD under "Other Health Impaired"; and (2) the evaluation must be done without undue delay; (10) Section 3 of 707 KAR 1:190, defining "referral", is deficient because the school system and not the parent defines when a referral begins; (11) "Referral" can mean simply the gathering of information by the school system prior to an actual referral being made; (12) under federal regulation, a child must be served within sixty (60) calendar days of referral; (13) schools are watching and monitoring children for extended periods of time, before a referral is being made and services provided; (14) children are not receiving a "free and appropriate public education" as required by federal law; (15) "Referral" should mean the initial referral by the parent, not the referral made by the school after extended monitoring; (16) because there is reason to suspect they may have a disability, screening should include those children who have been: (a) in detention for a period of time; or (b) recommended for suspension or retention due to discipline; (17) Federal law requires that children who are suspected of having a disability must be screened, evaluated and assessed.

Senator Kafoglis asked how children with ADD are identified. Ms. Allison responded that: (1) assessment tools have been developed and recommended by the Office of Civil Rights including the "Conners Assessment"; (2) assessments are objective standards by which ADD can be measured, which include observation by the teacher and the parent; (3) a brain scan of a child with ADD reveals that blood sugars do not get processed in a particular part of the brain, and as a result, the child does not remain attentive, nor is he able to maintain impulse control; (4) in certain children, medication allows the brain properly to process sugar, thereby correcting the attention deficit problem.

In response to questions from Senator Kafoglis, Ms. Allison stated that: (1) some of the children with ADD are being served; (2) CHADD was founded because of the large number of children that are not being identified; (3) under the current procedure, it is up to the parent to bring the child's condition to the attention of the school system; (4) the parent identifies the child by going to the medical community; (5) the system is failing to inform parents that they have a right to request an immediate evaluation and assessment of the child; and (6) once brought to the school system's attention, school officials are telling the parents that: they: (a) do not have to do medical evaluations; and (b) should not have their children labeled as a "special education" child.

In response to a question from Subcommittee staff, Ms. Allison pointed out that: (1) CHADD does not want to require that children with ADD automatically receive special education services; (2) ADD should be included in the "Other Health Impaired" category of disability just like "Epilepsy", so that the child would be eligible for services if ADD causes a learning problem; (3) if the child has ADD, but his ability to learn is not affected, the child should not be entitled to receive special education services; (4) neither a diagnosis of ADD, alone, or any disability listed under the category of "other health impaired, does not qualify a child for special education services ; (5) because ADD is not listed under "other health impaired", school systems often are testing children only under the disability categories of "learning disability" or "emotionally disturbed"; (6) ADD often causes in attentiveness, which may not qualify a child for special education services under the categories of "learning disability" or "other health impaired"; (7) parents who are not familiar with their rights under federal law are being turned away without getting the services they need for their children; (8) parents are not being told they have the right to a due process hearing if the local school system refuses to evaluate the child; (9) children who are not getting evaluated: (a) become delinquent because of low self esteem; (b) subject to sanctions under the juvenile justice system; and (c) often end up taking their own lives.

Joni Swift, Chair of the CHADD Council added that: (1) she has worked with ADD children in the western part of the state; (2) Education employees often are not open to talking about ADD; (3) from January 1, 1993, she has worked with twenty children who are not receiving the special education services to which they are entitled; (4) unless CHADD assists, parents are not getting the required services; (5) early identification of these children supports one of the goals of KERA, i.e., that all children are entitled to a "free and appropriate public education"; (6) in Virginia, ADD has been placed under "Other Health Impaired"; (7) a child should not be placed in detention over a specified period of time, without: (a) a referral being made; and (b) an evaluation conducted; and (9) CHADD requests that 707 KAR 1:170, 707 KAR 1:180, 707 KAR 1:190, and 707 KAR 1:200 be found deficient.

Eve Proffitt, from the local school districts, stated that: (1) inclusion of ADD in "other health impaired" was discussed at the federal level, and it was decided that the whole issue needed more study; (2) the department, as well as the federal government, is still gathering data on the issue; (3) these administrative regulations will identify those children in need of special education services; (4) the definition of Special Education is: "those specific differential services that children need to meet disabilities"; (5) many children with ADD need accommodation in the classrooms including: (a) longer test taking time; and (b) shorter homework assignments; (6) children do not need to be tested to give them the help they need; (7) these administrative regulations require that: (a) information be gathered from the referral source; and (b) an analysis be made to determine what has been tried to help the child; (8) a parent does have a right to be a referral source under these administrative regulations; (9) after a referral, an admission and release committee, including the parent, evaluates the child; (10) the admission and release committee then attempts to determine if things have been tried in the regular school environment to help the child; (11) if at all possible, children need to learn in the regular school setting; (12) the ADD testing process is not necessarily the answer for children with ADD; (13) education personnel are more aware of ADD than they have ever been, and are trying to work with children with ADD; and (14) special education services should be reserved for those who really need the services.

Representative Ruth Ann Palumbo stated that: (1) children with ADD need to be tested just like children are tested for achievement, IQ or if they have any medical condition that hinders their ability to learn; (2) The Federal Rehabilitation Act of 1973, Appendix G, provides that when the student is being considered for "suspension or expulsion", a school should consider intervention on behalf of a student because of a possible disability; (3) CHADD asked that these administrative regulations include a provision for screening children for possible disabilities, if the child is being considered for suspension, expulsion, retention or detention; (4) pursuant to the September 16, 1991 Memorandum from the United States Department of Education on ADD, children with ADD should be included under the disability category of other health impaired "in instances where the ADD is a chronic or acute health problem that results in limited alertness, which adversely affects educational performance. In other words, children with ADD, where the ADD is a chronic or acute health problem resulting in limited alertness, may be considered disabled under Part B solely on the basis of this disorder within the "other health impaired" category in situations where special education and related services are needed because of the ADD."; (5) KERA mandates that there be an "appropriate education" for all children with disabilities, no matter what the physical limitation; (6) a medical profile of children with ADD states that these children have: (a) memory dysfunction; (b) an inefficient convergent memory; (c) poor active working memory; (d) visual fine motor integration deficit; (e) neuromaturation delay in fine motor controls; and (f) a significant language disorder; (7) teachers and parents don't have the training to find or evaluate this condition without medical intervention; (8) ADD is a medical problem and must be dealt with medically.

Ms. Proffitt responded that: (1) the tests she referred to in her previous testimony dealt with academic or cognitive tests; (2) the evaluation process is very important in working with children with

ADD; (3) it is important to observe these children in the classroom, working with their peers to see what tasks they are not successfully completing; (4) accommodations must be made in the classroom or these children will not be successful; (5) KERA requires the school to meet the needs of all children; (6) children have a right to have their needs met; (7) often, observations can be made in the classroom that will allow the appropriate accommodations to be made without medical intervention; and (8) children with ADD can have their needs met under the regulations as they are currently proposed.

Dr. Tom Ballowe, a school psychologist for fifteen years, director of special education in Paducah independent schools and president of the Kentucky Administrator's of Special Education (KASE), stated that: (1) there are specific items in these administrative regulations that are troublesome to KASE; (2) the process for putting these administrative regulations in place has taken eleven months; (3) the department has promised to continue to work out the problems with these administrative regulations; (4) special educators in the state need administrative regulations work with; (5) the administrative regulations need to be updated; (6) the Department should be commended for its efforts in this process; (7) information on ADD training has been disseminated to all 177 school districts; (8) most schools districts are attempting to comply with the federal mandate; (9) the department has done all it can to implement the ADD requirements; (10) if there is a problem with enforcement, it is the failure of the local school districts to enforce the mandates; (11) time delays in diagnosis and referral are designed to help the student; (12) the National Association of School Psychologists believes strategies and interventions are necessary protect the children prior to the child being referred for formal evaluations; (13) the Federal Office of Civil Rights in an April 1993 memorandum states that it was not the intent of the law to require an evaluation simply based on the parent's request; (14) parental demand is not sufficient to require an immediate evaluation; (15) the American Association of School Administrators, the National Association of Directors of Special Education; the National School Board Association; the Council for Exceptional Children; and other important school associations opposed the inclusion of ADD as a special disability category; (16) the NAACP stated that the main reason for not including ADD as a special category was the potential for abuse of this category by black male children; (17) over-categorization can be harmful, arbitrary and stigmatize children; (18) more regulation is not needed; (19) enforcement of the current regulations is needed; (19) parents need to ask for more hearings; (20) monitoring and screening is properly occurring in many school districts; (21) if screening is not occurring in other districts then the district should be taken to task; (22) a new category of disability will not solve the problem; and (23) a medical condition should not be diagnosed through the school system.

Senator Huff asked: (1) whether Mr. Ballowe's program of disability classification was in place prior to the implementation of these administrative regulations; and (2) how Mr. Ballowe defined disability. Mr. Ballowe responded that: (1) ADD is a relatively new category of disability; (2) the program has been in place for approximately five years in Mr. Ballowe's district; (3) disability is defined differently depending upon whether you are talking about federal or state law; and (4) approximately 3 to 5 percent of the children in his school system suffer from ADD, which was consistent with the national average.

Senator Smith asked if the medical community had discovered the cause of the increased incidence of ADD. Mr. Ballowe responded that: (1) there are several causes, including metabolism of glucose in the brain, but that none of these conditions are educationally caused; and (2) all the pediatricians in his district: (a) understood the need for intervention in the classroom prior to medical intervention; and (b) are aware of the need to move cautiously.

Senator Richard Roeding asked if all the school systems were using the educational information provided by the department. Mr. Ballowe stated he had no statistics on the utilization of training material by school systems.

Nancy LaCount, Department of Education, Division of Professional Development, stated that: (1) she is the ADD contact person within the Department of Education; (2) training packets were distributed to local school districts; (3) districts are beginning to use the information to train: (a) classroom teachers; (b) school psychologists; (c) counselors; (d) parents; and (e) medical community; (4) the instruction included the use of a video tape, and ranged from looking at the characteristics of ADD in the classroom to potential medical and classroom intervention; (5) a program advisory has also been disseminated to all local coordinators that outlines the local school systems obligation to children with ADD under federal and state law; and (6) there are due process channels for schools and parents to see that the children get the special services they need.

Representative Palumbo stated: (1) the department should be commended for its hard work in beginning the training of teachers about ADD; (2) not all teachers and employees have taken the appropriate training; (3) it is imperative that all children receive the training they need on identifying ADD; (4) while the items requested by CHADD assure compliance with existing federal mandates, they do not represent any new requirements for children with ADD; (5) in its final report on Kentucky, the United States Department of Education found that the Kentucky Department of Education failed to establish procedures and meet requirements for implementing the provisions of federal law; (6) the state in essence is responsible for the local districts failure to comply with federal law; (7) McCracken county was reprimanded by the United States Office of Civil Rights, after at least three behaviorally and emotionally disturbed middle school students were placed in a janitor's closet for misbehaving; and (8) a Graves county principal was reprimanded for taping shut the mouth of a hyperactive elementary school student.

Ken Worlech, Associate Commissioner, Office of Special Instruction, stated that: (1) the corrective action plan referred to by representative Palumbo is exactly what the administrative regulations proposed by the department are designed to do; (2) the federal monitoring visit found that the existing administrative regulation did not comply with federal law; (3) the administrative regulations before subcommittee correct the deficiencies cited in the federal monitoring visit have been reviewed and approved by the federal department of education; and (4) school districts are waiting to receive these administrative regulations so they can develop their own local policies and procedures.

Senator Kafoglis stated that he felt: (1) the professional agencies that deal with the state department of education seem to favor the department's approach; (2) parents would not be up here today asking for inclusion of ADD, if they did not have some legitimate concerns; and (3) for some reason, the concerns of the parents are not being adequately met.

Associate Commissioner Worlech responded that: (1) the concerns of the department and the parents are not in opposition to one another; (2) some local districts are not fulfilling their obligation; (3) the department is concerned that the changes requested will not solve the problem; and (4) parents do have the right to request due process hearings if their children are not being treated.

Senator Kafoglis asked why the department is not informing the parents of their right to request a due process hearing. Associate Commissioner Worlech responded that parents could challenge the fact that they are not being informed of their right to a due process hearing. Senator Kafoglis pointed out that the department could inform parents of their right to a hearing, since they inform them about so many other things.

Associate Commissioner Worlech stated that the department will be receiving a new parents' right document from the federal government to be disseminated to parents in the fall. The writing of the parents' rights document is also dependent upon promulgation of the administrative regulations currently before the subcommittee

Deputy Commissioner Rogers stated that: (1) there is a require-

ment that the school system locate children who may have disabilities; (2) parents have the right under federal law to request special services for their children under a procedure called "Child Find"; (3) the system does not work one hundred percent of the time, however; (4) there is a fiscal monitoring system now in place allowing federal funds to be withheld if the system does not meet federal requirements; (5) there is not an adversarial relationship between the department of education and any concerned group; and (6) the department will continue to work with all interested groups to resolve remaining issues relating to the special education program.

Chairman Kerr pointed out that: (1) a September 16, 1991 memorandum from the U.S. Department of Education states that ADD should be classified for services under the "Other Health Impaired" category when the ADD results in limited alertness; (2) in an April 29, 1993 memorandum, the U.S. Department of Education stated that a school district must evaluate a child and notify the parents of their due process rights: (a) if parents believe their child has a disability, whether ADD or any other impairment; and (b) the school district has reason to believe the child may need special education services; (3) the department does not want specifically to recognize ADD in the administrative regulations because it believes ADD is already included; (4) CHADD wants ADD to be specifically recognized because, since ADD is not specifically mentioned, the local districts are not getting the evaluation or attention because;

Associate Commissioner Worlech responded that: (1) federal memoranda allow identification of ADD under "other health impaired" or under some other categories; (2) if ADD is limited to only one category, the opportunity to provide services to children who do not meet the category of "other health impaired" would be limited; (3) schools have an obligation to make a decision concerning a child's disability; and (4) if the parents disagrees with the school systems decision, there are due process procedures available for them.

Charlie Muntz, Director of Special Education and Certified Personnel Franklin County Schools and Chairperson, Central Kentucky Special Education Directors, was concerned that: (1) the administrative regulations are being delayed; (2) the state is under a federal mandate to promulgate these administrative regulations by October; (3) these standards must comply with federal and state law; (4) the earliest date these administrative regulations can go into effect is October 3; (5) local procedures cannot be completed by October; (6) LRC may not realize that this delay may jeopardize federal funding; (7) federal officials may not have been requested to extend the time lines; (8) state administrative regulations should not exceed federal regulations; (9) the special education area is already "regulated to death"; (10) there are so many laws and court rulings that training to be a Director of Special Education almost requires a law school education; (11) since 1975, special education has been over regulated and under funded; (12) the state does not need regulations that cannot be funded and complied with; (13) special treatment that goes beyond existing law is not needed; (14) there is a great deal of confusion related to the area of Attention Deficit Hyperactive Disorders; (15) this confusion has contributed greatly to the delay of these administrative regulations, putting Kentucky "at risk" for noncompliance that could affect funding to operate the current program; (16) one not familiar with special education, and who attended an August 18 meeting of the Interim Joint Committee on Health and Welfare, Subcommittee on Children with Disabilities, might conclude that: (a) school districts thought they could forget about federal law when KERA was passed; (b) schools will not diagnose and send students to special schools, because the districts don't want to give up the federal funding for disabled; (c) ADHD students should not be served with low socio-economic disabled students; (d) a legislator advocates the voucher system so that ADHD students can attend private schools; (e) parents need to be in charge of schools, and every major advance in special education has been made by parents rather than the system; (f) the September 16, 1991, Office of Special Education memo to Chief State School Officers supported the notion that the diagnosis of ADHD automatically qualifies a child under the category of "Other Health Impaired" for special education services; (17) if the delay of the regulations is based upon the meeting of the Subcommittee on Children with Disabilities meeting on August 18, the delay is founded on emotionalism rather than fact; (18) school districts have a myriad of laws and regulations that impact their behavior or consequences related to noncompliance.; (19) KERA is one more consideration; (20) special education officials still believe they must comply with federal law; (21) school systems have no desire to hoard federal money that is received for disabled students; (22) no one would keep a child from attending a special school because his district would lose the $349 federal allotment for that child's education; (23) ADHD students can and should be served in the public system; (24) these students may be classmates of low socio-economic disabled peers; (25) it is difficult to comprehend a legislator calling for a voucher system in a legislative meeting or the motivation for such a position ; (26) parents have been responsible for many advances in special education; (27) a system where parents and educators work together and share decision making is preferable to one where "parents need to be in charge"; (28) KERA and local schools take a proactive view toward issues like ADHD, for example: (a) the US Department of Education has recognized the Jefferson County School Psychological Services staff for their accomplishments in serving children with ADD; (b) Franklin County teachers have attended training and follow-up training sessions on effective teaching strategies with ADHD students; (c) these sessions have included sessions with parents and teachers; (d) the Franklin County Parent Resource Center will also be facilitating support groups for parents of ADHD students; (29) the September 16, 1991 memorandum from the US Department of Education states that children with ADD should be classified as eligible for services under "other health impaired" in instances where the ADD is: (a) a chronic or acute health problem that results in limited alertness; (b) adversely affects educational performance; (30) services to students are tied to adverse impact on educational performance, not on someone's diagnosis; (31) these administrative regulations should not be held hostage to the ADD issue; (32) the obligations to students are spelled out under federal law; (33) these administrative regulations do not need terms that go beyond protections under federal law; (34) in a workshop conducted by the Office for Protection and Advocacy, it was insinuated that there were some 900 disabling conditions that could qualify an individual under federal law; (35) he wondered whether LRC will entertain such consideration for the other 899 conditions; (36) if special consideration is given to ADD, can it be denied to others; and (37) the implementation of procedures that could resolve this issue at the local district level is being delayed by this very hearing.

Chairman Kerr pointed out that: (1) the hearing before the Administrative Regulation Review Subcommittee is required by statute; and (2) public comment from all interested parties is essential to the process. Mr. Muntz stated that he believed the process had gone on for eleven months and that the meeting before the subcommittee was an optional meeting

Subcommittee staff pointed out that: (1) this meeting was required by KRS Chapter 13A; (2) there was a delay on the part of the Department of Education because it had to take proposed amendments back to the State Board of Education for approval; (3) the amendments: (a) were received by the Subcommittee on July 22, 1993; (b) had not been seen or considered by the public; (c) could have resulted in delaying the administrative regulations a month, so that all interested parties could get a copy of the sixteen page amendment; and (4) the Department of Education, not the Subcommittee, agreed to defer these administrative regulations a month so that, prior to a discussion of these amendments in a public forum, the public could be informed of their contents.

Chairman Kerr stated that: (1) children with ADD are of great concern to the members of the Subcommittee and to the public at large; (2) the Subcommittee is attempting to protect the interests of

constituents, and to ensure that the administrative regulations of the department comply with the intent of the General Assembly and statutory authority; (3) the General Assembly was elected to perform this important statutory function; and (4) the Subcommittee intends to meet its constitutional and statutory obligation to monitor Executive Branch administrative regulations, pursuant to the duty and mandate imposed on it by KRS Chapter 13A.

Janet VanNane, Parent Representative for Children with ADD, stated that: (1) she has a child with multiple disabilities including: (a) ADD; (b) bipolar mood disorder; and (c) aggressive conduct disorder; (2) the school systems need to work more closely with the parents, because the parents know the child better than anyone else; (3) children need to be treated in a positive manner; (4) the school system, not the courts, should handle the day to day activities of the children while they are in school; (5) when a child goes to court, it affects both the child and the family; (6) the court system places children under stress; (7) families are required to pay attorneys to represent the children, when the children did not need to be in the court system in the first place; (8) Saturday and alternative schools are not necessary; (9) Individual Education Plans (IEP's), prepared for children with disabilities, are not being followed; (10) teachers are not being informed about IEP's for students; (11) school systems are not administering medication for children, as required, and children do not always remember to take their medication; (12) if we continue to treat children as criminals, they will grow up to be criminals.

Teresa Howard Wasson, President of the Kentucky Council for Exceptional Children, stated that: (1) Kentucky is in compliance with federal policy; (2) the administrative regulations as proposed comply with statutory authority; (3) if ADD is added to the disability category of "Other Health Impaired", awareness will be increased, but services will not change; (4) children must still qualify for special education services on an educational basis and not on a medical basis; (4) many children with ADD are receiving services; (5) the children are being served in the regular education setting; (6) more training on ADD awareness and behavior management is required; (7) if children do not qualify for special education services, they are not going to get the education they are entitled to without behavior management; (8) teachers need to be trained in behavior management techniques; (9) it is unclear where the breakdown in communication between parent and school is occurring; (10) parents need to be informed about their rights to an evaluation and a hearing.

Ms. Swift, stated that: (1) CHADD supports the April 29, 1993 memorandum from the Office of Civil Rights; (2) parents should not expect their children to be tested unless there is reason to believe that a child's disability is causing an educational difficulty; (3) parents are not being informed of their rights.

Cindy Rausch stated that: (1) she is concerned about a number of the administrative regulations; (2) there is no definition of disability in the administrative regulations; (3) since eligibility for services requires a child to have a disability, there needs to be a definition of disability in the administrative regulations; (4) disability must be specifically defined, or there will be a great deal of confusion about who qualifies for services; (5) "disability" could include students who have not mastered the 75 learner outcomes; (6) "social and emotional competence" and "academic performance" also could be measured by mastery of the 75 learner outcomes; (7) if non-mastery of the learner outcomes is considered a disability, potentially all the students in the state of Kentucky could qualify for special services; (8) the financial and ethical ramifications of defining disability in terms of the learner outcomes could be devastating; (9) for many years, parents of children with disabilities have fought to get specific funding for their disabled children; (10) if the definition of "disability" is expanded to include mastery of the learner outcomes, there will not be sufficient funds to meet all the legitimate needs for disabled children; (11) the amount of money for each child will decrease; (12) this is not fair for those children who really need the special education services.

Goal 3, Outcome 6, of the learner outcomes states that a child must be able to make decisions based on ethical values. Ms. Rausch asked the following questions concerning this valued outcome: (1) how will the school decide whose ethical values will be used? (2) what are the standards for measuring ethical values? (3) what specific programs or interventions will be used to ensure that the child develops the state mandated ethical values? and (4) does the state have a right to mandate what those ethical values are supposed to be?

Ms. Rausch asked (1) what criteria the state uses for measuring positive self esteem in a child; and (2) how the school intends to intervene if a child is not exhibiting a positive self esteem.

707 KAR 1:200 relates to eligibility determination and data collected on the family. Ms Rausch asked: (1) what data was being collected on children and families now and in the future; (2) what were the sources for obtaining this information; (3) how long this information will be retained; and (4) why the department was collecting the information,

Ms. Rausch added that: (1) she was concerned about the security of confidential information logged into the statewide Kentucky Educational Technology System (KETS); (2) the Office of Educational Accountability, in its report on Service and Technology, stated that the privacy of information in KETS cannot be assured; (3) while parents are able to inspect any "educational records" available relating to their child or youth pursuant to 707 KAR 1:240, treatment records maintained by a physician, mental health professional or paraprofessional are not: (a) considered educational records; and (b) subject to disclosure. Ms. Rausch stated that under this provision, parents do not have a right to see their children's medical or mental health records. Chairman Kerr pointed out that the section which would deny access to mental health and medical records was being deleted.

Ms. Rausch asked if mental health treatment is currently going on that parents are not being informed about. Nancy LaCount, Department of Education, responded that: (1) disability categories are set out in KRS 157.200; (2) there are thirteen federal disability categories, and these administrative regulations relate to these thirteen disability categories which are also set out in KRS 157.200; (3) 707 KAR 1:200 establishes the criteria by which a child's eligibility for educational services is determined; (4) as curriculum has been redefined and outcomes have been established, ways of measuring academic achievement have broadened what is needed to determine the way students are successful in school and in life; (5) pursuant to federal and state law, a child is not evaluated for disabilities without parental consent; (6) information gathered on students relates not only to the successful mastery of the learner outcomes, but also to areas where they have been previously assessed, such as reading, writing, and mathematics

Chairman Kerr asked if a child would be classified as disabled for failing to master the learner outcomes. Ms. LaCount responded that: (1) a child would not necessarily be labeled as disabled for failure to master the 75 learner outcomes; (2) there is a committee process that looks at all the outcomes; (3) while no single outcome is considered in isolation, the outcomes are taken into consideration.

Chairman Kerr asked if a school teaches that to have a correct multicultural world view the child's mind must be open to the alternate perspective that homosexuality is acceptable, will the child be labeled as disabled if the child has been raised to believe that homosexuality is not an acceptable alternate lifestyle and the child adopts that family value. Department personnel responded that the child would not be labeled as disabled for holding the family's value on the issue of homosexuality.

Chairman Kerr asked if the 75 learner outcomes appear anywhere in an administrative regulation. Department personnel responded that: (1) the learner outcomes do not appear in an administrative regulation; (2) they were approved by the State Board of Education, approximately eighteen months ago, following the work of the Council on School Performance Standards; (3) the learner outcomes are designed to be consistent with the learner goals found in KRS

158.6451; and (4) the Department intends to promulgate an administrative regulation adopting the 75 learner outcomes.

Chairman Kerr asked if the parental consent must be obtained before psychological testing is done on a child. Department personnel stated that consent is obtained through a meeting process with the parents.

Department personnel responded to questions raised by Cindy Rausch relating on the gathering of family information, as follows: (1) most family information is gathered through: (a) family interviews; and (b) social developmental history; (2) background information on a child is obtained in terms of basic milestones in the child's life, including when the child learned to talk, etc.; (3) this background information may reveal whether the child will need services later in life; and (4) without parental involvement, performance assessments and portfolios are not being used to obtain data on the family; (5) the KERA system is not part of the identification system for students with disabilities;

Deputy Commissioner Rogers stated that: (1) when a child, who is suspected of having a disability that interferes with the child's ability to learn, is referred, school personnel must identify a whole range of information to help the child become successful in school in conjunction with the parent; and (2) this range of information includes (a) the child's work in the classroom; (b) how the child interacts with his peers; and (c) medical problems that parents bring to the attention of the committee;

In response to a question from Ms. Rausch, Department personnel stated that: (1) while some children who are depressed may meet other categories of disability, depression is not a separate category of disability in and of itself; and (2) the state is not involved in any program that uses the portfolios to assess a child's mental health.

Deputy Commissioner Rogers stated that: (1) security systems will be built into the state-wide computer system to enable the school system to block information that is of a confidential nature; (2) parents can request that confidential information in a child's file be deleted under federal law; and (3) if the school system disagrees with the removal of the information, a parent can attach a letter of objection to the information sought to be deleted.

Barbara Pollard, Director of the Federation of Families for Children's Mental Health, stated that: (1) she has a child with multiple disabilities; (2) the department understands that federal law supersedes state law; (3) there is a misconception about the September 16, 1991 Memorandum from the federal government on children with ADD; (4) parents do not want their child in special education unless it is necessary; (5) families with ADD children are not receiving the services they are entitled to under federal and state law; (6) the blame for the lack of service rests with the local school system; (7) local districts are not enforcing the federal and state mandates; (8) there are many other groups in the state that are concerned about children with ADD; (9) it took six years to have her child evaluated through the school system; and (10) parents do not want anything their children are not legally entitled to under state and federal law.

Dr. Donald Cross, Vice-Chairman of the State Advisory Council for Exceptional Children and Professor from the University of Kentucky Department of Special Education, stated that: (1) the advisory panel supports the Council on Special Education's position on ADD; (2) many children are seen at the University of Kentucky that are not receiving services from the local school system; (3) although it may give some increased emphasis on the disability, adding ADD to the category of "Other Health Impaired" will not affect the services that are being provided; and (4) teachers who will respond to parents requests for help must be placed in the public schools.

707 KAR 1:061. Repeal of existing regulations. This administrative regulation was amended to add a statutory citation to the RELATES TO and NECESSITY AND FUNCTION paragraphs, pursuant to KRS 13A.220(3)(e).

707 KAR 1:160. Free appropriate public education. This administrative regulation was amended to cross-reference another section of the administrative regulation for clarity, pursuant to KRS 13A.222(4)(a).

707 KAR 1:210. Individual education programs. This administrative regulation was amended to: (1) cross-reference sections in the administrative regulation for clarity, pursuant to KRS 13A.222(4)(a); and (2) add references to Section 1 of 707 KAR 1:180, pursuant to KRS 13A.222(4)(a).

707 KAR 1:220. Placement in the least restrictive environment. This administrative regulation was amended to: (1) add references to Section 1 of 707 KAR 1:180 and 707 KAR 1:210, pursuant to KRS 13A.222(4)(a); and (2) make additional drafting amendments, pursuant to KRS 13A.222(4)(a).

707 KAR 1:230. Delivery of services. This administrative regulation was amended to: (1) add references to Section 1 of 707 KAR 1:180 and 707 KAR 1:210, pursuant to KRS 13A.222(4)(a); and (2) make additional drafting amendments, pursuant to KRS 13A.222(4)(a).

707 KAR 1:240. Confidentiality of personally identifiable information. This administrative regulation was amended to cite 34 CFR 99.7 in Section 3(1) for clarity, pursuant to KRS 13A.222(4)(a).

707 KAR 1:250. Services in other programs. Section 2(1) of this administrative regulation was amended to cite 707 KAR 1:180 and 707 KAR 1:210 for clarity, pursuant to KRS 13A.222(4)(a).

707 KAR 1:260. Comprehensive system of personnel development. Section 1(2) of this administrative regulation was amended to cite 707 KAR 1:160 for clarity, pursuant to KRS 13A.222(4)(a).

Workforce Development Cabinet: Department for Adult and Technical Education: Management of the Kentucky Tech System

780 KAR 2:015. Administration of technical institutes. Senator Smith stated that: (1) a certificate or diploma was needed by the technical schools; (2) the technical schools and the universities should work together to insure that some of the credits earned at technical schools could be recognized by the universities, and transferred if a graduate of a technical school wanted to continue his education at a college or university, which was currently not done;.and (3) he believed that while technical school education was important and would become more important and more utilized, the recognition it deserved was not being given.

Agency personnel: (1) agreed that recognition, diplomas or certificates, and transfer of credits were important; and (2) stated that the Interagency Council For Education and Training are discussing transition and transfer between (a) vocational-technical schools and colleges; and (b) community colleges and colleges and universities; and (c) high school credits in tech-prep programs. Senator Smith agreed, and stated that: (1) while Western University honored credits from Elizabethtown Community College, he had received a number of complaints over the refusal of the University of Kentucky to honor these credits; (2) the refusal of the University of Kentucky to honor these credits was not good judgment; (3) the failure of the universities to correct the situation would affect the decisions made by the General Assembly with regard to funding requests; and (4) a better working relationship between the technical schools and the universities was required.

Senator Smith stated that he: (1) had received a number of complaints concerning the non-recognition of some credits from Elizabethtown Community College credits by the University of Kentucky that are recognized by Western; (2) would be influenced by this policy when the issue of financing arose during the Session.

This administrative regulation was amended to make the incorporation by reference of material comply with the format requirements of KRS 13A.220(4).

Department of Mines and Minerals: Surface Mining Safety Standards

805 KAR 3:010. Definitions. David Johnson, appeared before the Subcommittee, representing the agency. He requested that this

administrative regulation be amended to delete four definitions from Section 1 and to create a new definition for the word "accepted". The four definitions deleted from the regulation are being deleted because they are defined in the authorizing statute.

Cabinet for Human Resources: Department for Social Services: Day Care

Deputy Secretary Masten Childers II, offered introductory comments on day care administrative regulations. He began by thanking Chairman Kerr and members of the Subcommittee for their input and perspective on the administrative regulations. He stated that the Cabinet believed the administrative regulations reflected a substantial effort and agreement among many interests in day care.

Deputy Secretary Childers noted the scope and significance of day care in Kentucky. He reminded the Subcommittee of approximately 90,000 kids in Kentucky who receive services from either licensed or certified day care centers. While there are 150,000 working mothers who need child care for 300,000 children, Mr. Childers explained that only approximately one-third of those children are in licensed or certified centers.

The issue of day care and the public debate concerning the regulation of day care facilities and homes, he stated, has been largely dominated by extreme points of view. The real challenge for the Cabinet, it was conceded, and for the Subcommittee, is how to consider the extreme points of view, which are based in good faith, and come together with the best of both points of view and find some workable and commonsense middle ground that achieves the overall purpose to ensure the health and safety of children who are in day care facilities throughout the state.

Deputy Secretary Childers requested that the Subcommittee look to the overall benefit of the administrative regulations to be realized by parents and children throughout Kentucky, rather than the relative inconvenience or burden which may be imposed by the administrative regulations on some.

He noted that the Cabinet has made every attempt to be responsive to issues raised from every aspect of the day care issue. He summarized by saying, that the Cabinet continues to focus on what the Legislature has instructed it to do by statute, and regulate for the health, safety and welfare of children pursuant to the statutory definition of day care centers found in KRS 199.894. He asked the Subcommittee to consider: (1) the administrative regulations, and proposed amendments; (2) those views expressed by interested persons who came to testify; and (3) to
give the Cabinet the benefit of the doubt, realizing that the administrative regulations are not the "ideal", but rather good and effective regulations.

He proposed that the 1994 General Assembly consider issues and concerns that the Subcommittee believes the administrative regulations fail to address effectively. He requested that the General Assembly: (1) be more specific and more exclusive in those areas that it believes the Cabinet should not regulate; and (2) allow the Cabinet to move forward with these administrative regulations in order to show that it has a commitment to the health and safety of the children of the state. He affirmed that the administrative regulations are:(1) not intended to offend the moral or religious philosophies or beliefs of any providers; or (2) infringe upon the content or subject matter or any instructional program in any facility in the Commonwealth; and (3) enacted to address health and safety issues.

Chairman Kerr thanked the Deputy Secretary for his hard work and assistance in the review of the administrative regulations.

Sen. Johns stated that: (1) Senate Bill 211 was enacted in 1990 because of a need in Kentucky for a spectrum of day care services; (2) at the time, Kentucky ranked: (a) 50th in the nation in the number of regulated home child care centers; and (b) near the bottom in staff-to-child ratios; (3) while proposed legislation to address day care failed in 1986 and 1988, legislation proposed to address day care failed, Senate Bill 211 was successful, not because of her work, but because of a concerted effort to bring together parents, providers, child advocates and the General Assembly; (4) reflecting this, the legislation created a Child Care Policy Council composed of many of these parties; and (5) these administrative regulations reflect the interests, concerns, and input of many people.

Senator Johns stated that these administrative regulations are good and will be better for Kentucky's children. She expressed regret that a tragedy, such as the death of the Georgetown child, had to occur before Kentucky addresses day care in the state. Senator Johns stated that: (1) she is confident Kentucky is moving forward in regulating day care; and (2) the new ratios will place Kentucky in the middle ranking of states with regard to staff-to-child ratios.

Commissioner Peggy Wallace stated that in promulgating the administrative regulations; (1) the Cabinet had made every effort to make the process as inclusive as possible; (2) that both she and her staff had spent many hours talking with parents, providers and advocacy groups about what: (a) would be in the best interest of the children of Kentucky; and (b) measures the Cabinet must take to promulgate the very best administrative regulations. She added that the Cabinet's recognition that is impossible to satisfy every person's interests and concerns was reflected in its common sense approach to the regulation of day care. This approach, she advised, was to look at what the Cabinet could do to address all the issues and concerns, knowing that this would bring to the table a group of administrative regulations that everyone could live with and the Cabinet could implement.

Debra Miller, Chair of the Child Care Policy Council ("Council"), advised the Subcommittee that the Council: (1) met and reviewed the administrative regulations after they were signed by the Governor as emergency regulations; (2) is supportive of the administrative regulations, however subsequent to the Cabinet's public hearing; and (3) has not met as a body to review the "amended after hearing" changes and may not have a position on these changes. Ms. Miller noted that on the major issues proposed by the administrative regulations, such as staff-to-child ratios, the Council, made up of private, profit and not-for-profit providers, has: (1) understood that it is important to reduce the staff-to-child ratios for the health and safety of children in Kentucky; (2) been supportive of the Cabinet's: (a) emergency provisions to close facilities quickly in cases where children are in danger; and (b) amendments made after the public hearing to balance availability of and access to family child-care homes; and (c) with overall quality and regulatory issues.

Representative Robert Damron and Treasa Howard, a day care provider, stated that he: (1) was horrified by the death of the child in the Georgetown day care; (2) understood the Georgetown situation happened, because of the lack of enforcement of existing administrative regulations, and not because of administrative regulations, which might have prevented the tragedy, did not exist; and (3) believed the problem was not that Cabinet staff did not perform their job, but was impeded in the performance of their job because the Legislature might have failed to appropriate enough money to permit the staff to fully carry out their jobs.

Representative Damron commended Senator Johns for her efforts and dedication to the children of the state of Kentucky. He stated that her leadership and work in the passage of Senate Bill 211, and Deputy Secretary Childers's efforts, have led to overall improvement of the health and safety of Kentucky's children.

He concluded by: (1) stating that although the Legislature passes legislation and reviews administrative regulations with the best intent, too many times the implementation of administrative regulations result in achieving the opposite if what they were intended to achieve; and (2) expressing reservations about the administrative regulations that reflected concerns raised by many of his constituents. who: (a) live in a district that is not rich, is composed of working, middle class families, of which both parents work and which have a modest to good income; and (b) need affordable day care to continue working and providing for their families. Representative Damron state that

parents feared that the reduction of the staff-to-child ratio for the birth to one year old category from one to six children, to one to five children, will increase their cost of child care for their infants and toddlers. As a result of expected increases of 15% to 20%, he stressed that economic reality will force many parents to look for alternative child care outside a regulated environment. Representative Damron stated that this proposed change would appear to avert the intent of Senate Bill 211, which was enacted to bring child care services under the regulatory authority of the Cabinet.

Representative Damron introduced Treasa Howard, an owner and operator of Our House Creative Child Care in Nicholasville, Kentucky. He stated that: (1) it is one of the finest child care facilities he has ever been acquainted with; (2) his son attends the facility because both he and his wife work; and (3) after careful searching and consideration, he and his wife chose Our House Creative Child Care because it would provide everything they wanted for their son. He described his impression of Ms. Howard's facility, and stated that he was personally aware that, in order to retain quality staff she had given her staff a raise that she financed by taking a cut in her own compensation. He noted that Ms. Howard's facility has implemented many of the substantive requirements found in the administrative regulations a long time ago.

Treasa Howard stated that: (1) her facility serves 135 children, eighteen of which are below the age of two years; (2) her facility takes a loss on nursery care as do many for profit centers, because; (a) a parent cannot actually afford to pay the actual costs of care for infants; and (b) a facility must spread those costs among all levels of care; and (3) stressed that if the ratios proposed for infant care go into effect, she will be forced to raise her charges, which will force many parents to seek alternative, unregulated care. She quoted from a letter she had received from one of her concerned parents: "We are the truly poor people of our state, we are the taxpayers. We do not qualify for government aid and we are proud of that. We work hard and pay our taxes, and at the end of the week there is usually nothing left. Our bills are paid, our children are fed, and we just manage to keep our heads above water. ...It takes both husband and wife, working fulltime to provide."

Ms. Howard explained that she would like to see staff-to-child ratios of three-to-one across this state, but there is only so much money to provide quality day care. She asked the Subcommittee to remember, that when they are approving the administrative regulations, some of the requirements will have the effect of forcing parents to seek alternative, unregulated care, because they cannot afford quality care.

She stated that it is practically impossible for her facility to comply with certain provisions in the administrative regulations because: (1) there is a portion of the day when her facility's playground is unshaded, except for some outdoor umbrellas, and 905 KAR 120 Section 5(1)(k) requires that, "If a facility provides an outdoor play area for infants and toddlers, the outdoor area shall be shaded..."; (2) she cannot meet both the: (a) water temperature requirement found in 905 KAR 2:120, Section 3(3)(l)4, that prohibits water temperature at lavatories used for hand washing to exceeds 110 degrees Fahrenheit; and (2) Kentucky Health Department requirement that her facility to have 145 degrees water in the kitchen; and (3) the requirement of posting deficiencies for five years is impractical and cumbersome, particularly for very minor deficiencies which are readily and quickly corrected, such as a missing pair of tweezers missing in a first aid kit.

Cabinet representatives responded to each of the concerns raised by Ms. Howard as follows: (1) her facility has met the requirements for licensure, which would include the provisions relating to her facility's playground, or she would have been cited with a deficiency; (2) deficiencies must be available for parents or the Cabinet to inspect, but 905 KAR 2:110, Section 2(1)(n)1 requires them to be posted only for one calendar year; (3) the Cabinet imposed the 110 degree water temperature requirement in the belief that a temperature control device can be attached to the faucet to regulate the temperature.

Senator Smith stated that the devices are available and the temperature requirement is necessary to protect the safety of children.

Senator Huff asked if, in the sampling of parents served by her facility Ms. Howard had any projections on the: (a) additional costs that would be passed on to parents as a result of the new administrative regulations; or (2) the number of parents who might choose alternative day care services. She responded that: (1) the maximum group sizes and the new ratios imposed for the infants obviously effect the cost of the operation, particularly with regard to retaining educated and qualified staff; (2) the overall financial burden to each parent will be spread out over all age groups, and therefore, will not be a substantial increase; and (3) twelve of the eighteen infants served would seek alternative care.

In response to questions by Representative Allen, Ms. Howard stated that, for a total of sixty hours a week she: (1) charges $70 per week for a diapered baby; (2) $60 per week, if a child is potty trained; (3) if the ratio for the infant to one year category lowered, will simply divide the $70. per week cost of care for the sixth child among the other five infants, which would cost the parents of the other five infants $84 per week; and (4) that this $14 per week increase will place a hardship on many parents.

In response to a question by Senator Smith, Commissioner Wallace stated that: (1) compared to other states, Kentucky ranks in the middle on the issue of staff-to-child ratios; and (2) studies clearly indicate that the lower the ratio, the better the quality of the child care.

The Commissioner provided the Subcommittee with an analysis of a day care center in Kentucky, in which it was stated that the increase for a child, per week, would be an estimated $3.75 for each parent, spreading the cost over all levels of care, not just for infant care. She stated that the analysis considered the cost to: (1) add one staff member, which would be necessary to meet the new ratio imposed; and (2) meet the new provider and staff training requirements.

Department for Social Services representative, Mike Cheek, responded to Senator Smith's inquiry, by stating that: (1) in reviewing the Cabinet's inspection records of licensed facilities, care and supervision problems had been noted in such facilities in the one-to-six ratio category; (2) the Cabinet elected not to adopt the nationally recommended standard of one-to-four and, instead, adopted a compromise ratio of one-to-five. Commissioner Wallace stated that the analysis indicates a pattern of deficiencies when the ratio in the facility is one staff to six children.

Representative Damron stated that: (1) he is unaware of how the one-to-six ratio effects overall child care, and suggested that the problem may relate more to the "quality" of the staff in each facility; (2) the reduction in the staff ratio to one-to-five may not effectively address the quality issue; (3) expressed concern for the increased cost to working parents and the effect such an increase will have on the working mothers in his legislative district; (4) the alternative for many of his constituents will be to seek alternative unregulated day care; (5) he was concerned for Kentucky's children, and the effect the new administrative regulations will have on their lives; (6) he recognized that the Cabinet has had to make some compromises in proposing the final language and, as a result, in his opinion less safety standards will be imposed and the Commonwealth's children will be more at risk; (7) he had come to the meeting to express his concerns for the children in his district as well as the state; and (8) he does not believe the administrative regulations proposed by the Cabinet are good for Kentucky's kids.

Representative Buis's constituent, Marilyn Coffey, testified that: (1) she has worked for twenty years in child care; (2) she serves as the Coordinator of the Family Resource Center in Casey County; (3) with the passage of the Education Reform Act, the Legislature

established very specific responsibilities for coordinators in linking child care to education in Kentucky communities, and that she takes this responsibility very seriously; (4) the reform law requires the resource center to provide several components, and among those relating to child care: (a) school age child care; (b) preschool for two and three year olds; (c) support and training for day care providers; (5) for three consecutive years, the center's needs assessment has identified a crucial need to recruit persons in her rural county to open a licensed day care facility; (6) her center: (a) makes every effort to link together as many services as possible; (b) seeks new ways to use existing resources and to encourage the establishment of day care centers in the county, which in rural Kentucky is essential to promote small business economic development; (c) recognizes that the health and safety of children is foremost, and that there was an additional responsibility to assist the providers in her community in their jobs; (7) expressed her concern that some provisions in the administrative regulations may have a disproportionate impact on small day care providers in rural Kentucky; (8) had met with representatives of the Department for Social Services before testifying, and was assured that her concerns would be addressed, both in: (a) Family Resource Centers; and (b) school age child care.

Chairman Kerr advised that the Subcommittee can revisit issues relating to child care by calling up the administrative regulations for further review, or the Legislature can look at statutory reform in the 1994 General Assembly.

Marie Botlo, with Snow White Preschool in Jefferson County and a child care provider for twenty-three years, made the following comments on behalf of the Jefferson County Child Care Association of which she is the secretary: (1) the administrative regulations should apply to all child care providers as every child deserves to be protected; (2) Cabinet inspectors should be trained to apply the administrative regulations uniformly; (3) assuming the twelve (12) hours of annual training becomes mandatory, the Cabinet should provide additional educational classes to providers at a reasonable fees, if not free; and (4) if the Cabinet reduces the staff-to-child ratio in the birth to one year old category, it will result in additional costs to parents.

She stated that Jefferson County: (1) has 24,045 children in Type I child care centers, with approximately 2,450 employees; (2) the costs to facilities in Jefferson County to meet existing requirements are: (a) annual costs for Tuberculosis skin testing $24,500; (b) six (6) hours of annual training at $49,000, adding an additional $49,000 per year for the Cabinet's new twelve (12) hour requirement; (c) provider cost of Cardiopulmonary resuscitation (CPR), $18,390 per year; and (d) $15,325 for First Aid. She stated that the costs, and new requirements imposed by the Cabinet should apply uniformly to all centers, day care homes, YWCA, and any facility or operation that takes care of children.

Ollie Barber, Attorney, introduced Bonnie Sullivan, the president of the Kentucky Child Care Association, who stated that the statewide Association: (1) supports day care administrative regulations and more importantly, the health and safety of Kentucky's children; (2) for many years has been providing preschool education, in addition to day care; (3) believes that all administrative regulations should be enforced across the board, and that any day care that accepts money for child care should meet the Cabinet's administrative regulations.

Ms. Sullivan recommended that the Cabinet: (1) develop a checklist so that surveyors and providers have a uniform and comprehensive list of items and requirements; (2) a checklist may remove the "judgment calls" made by different surveyors who may determine that some facility may be in noncompliance; and (3) consider flexibility in staffing requirements particularly when children are asleep. She stated that the additional costs to be realized by lowering the staff-to-child ratio for infant care cannot continue to be spread out among the older age categories; and that the Cabinet should help defray the costs of the training through grants or Cabinet-run programs. She stated that she supported the Cabinet's new training requirements, and that, for sometime, she has required her own staff to have at least twelve (12) hours of annual training.

Ms. Sullivan asked the Subcommittee to disapprove the language that permits a staff worker on duty, in a Type I or Family Child Care Home, to remain awake until the last child in care is asleep. A provider or staff, she stressed, should not be allowed to go to sleep while children are in their care because such a practice is unsafe, whether the child is in a facility or a home.

In response to a question by Senator Huff, Ms. Sullivan stated her facility is licensed for 93 children, including 24 infants. Senator Huff stated that it appeared her facility would experience a greater increase in costs as a result of the number of infants served in her facility.

Mr. Barber stated that: (1) 905 KAR 2:120, Section 1(c), appears to exclude facilities, with a "nationally recognized educational association" accreditation, from the staff-to-child ratio and maximum group size; (2) he understood this proposed language appears to benefit Montessori schools, and could be interpreted as special legislation. Stating that this exclusion would be construed as supporting a type of secular education, and that he based his comments and request on a legal and equitable standpoint, he requested that the Subcommittee consider removing the exemption and not exclude Montessori programs and other programs .

In addition, Mr. Barber asked that Debra Miller with the Child Care Policy Council, further consider whether the Council should support such an exemption.

Commissioner Wallace responded by clarifying that the: (1) administrative regulations do not exclude Montessori schools from the licensure requirements; (2) Cabinet recognizes that an identifiable portion of each day in a Montessori program is dedicated to educational training; (3) Cabinet has determined that any program which has nationally recognized educational standards relating to ratios and maximum group size: (a) may fall within this provisions, tiering the administrative regulation; (b) would utilize the national standard only during the educational training portion of the day; and (c) after instructional services have ended, would be required to comply with the Cabinet's child care standards.

Linda Locke stated that: (1) she was very active in supporting the passage of Senate Bill 211, and had worked during the 1988 and 1990 sessions to seek reform legislation for family child care; (2) Community Coordinated Child Care from Louisville, an agency that has been in existence for twenty-five years, is very supportive of the administrative regulations as amended; (3) her representatives: (a) understand the implications of the proposed staff-to-child ratio for infants, and are very sensitive to the issue of parents being able to afford child care; (b) the staffing ratios have not been changed in Kentucky since the 1960's, even though more research has shown that child care staffing ratios are the single most important indicator of whether a child is well cared for; (4) she supports Commissioner Wallace's analysis of the costs projections for the new infant ratios; and (5) these costs would appear to be minimal, if they are spread among all parents and not just parents of infants in a particular facility. She stated she was concerned that the Cabinet had not addressed staffing ratio cost increases among the older children, as these ratios also have not been decreased since the 1960's. She urged the Subcommittee to approve the: (1) new staffing ratios; (2) certified home requirements; and (3) discipline policy.

Sister Pat Hill testified on behalf of the Nazareth Montessori Children's Center. She stated that: (1) her facility has completed twenty successful years in benefiting children; and (2) she supported the amendment to 905 KAR 2:120, Section 1(1)(c), concerning nationally recognized educational association standards relating to staff ratios and maximum group size. Sister Hill recommended that the Cabinet consider an amendment to: (1) in Section 1(1)(c), Line 4, insert the words "or affiliated", after the word "accredited"; and (2) in Section 1(1)(c), Line 6, delete the word "accreditation". She explained that this would address facilities that are "affiliated" and subject to

nationally recognized educational criteria relating to ratios and group sizes. She stated that: (1) this would embrace more preschool programs, not just the Montessori schools; (2) Montessori programs, regardless of whether they are affiliated or accredited nationally, are not seeking an exception to the Cabinet's requirements; and (3) Montessori centers are seeking to "co-exist" and "co-operate" with other preschool programs and work for the good of children in unity and not diversity. Sister Hill requested that the administrative regulations be broad enough to embrace all preschool educational philosophies operating in the Commonwealth.

Chairman Kerr advised that the Cabinet agreed with the amendment and had submitted an amendment to address the concern.

Peggy Constock, a representative from Children's House Montessori in Louisville, testified that her facility: (1) would like to be accredited, rather than affiliated, by the American Montessori Society; and (2) is affiliated and complies with many of the same standards as a facility that is accredited, despite the increased costs to a facility the size of Children's House. The problem, she stressed, is the difficulty in finding trained certified Montessori teachers in the Louisville. While her facility is willing to train the needed staff, it would not be able to compete with the salaries of the public school system.

Marlene Greenwell, a concerned parent, told the Subcommittee that she has two children who have experienced the Nazareth Montessori, and she appreciated the good work the school had provided for her children.

Jim Newberry, a representative of Community Montessori, thanked the Cabinet for addressing concerns raised at the public hearing concerning Montessori issues, and requested the Subcommittee to approve the administrative regulations.

Jack McLee, with the Educare Learning Center in Lexington, and Ted Estes, with the Alpine Village School in Lexington, were introduced by Marie Cull, Attorney. Ms. Cull stated that: (1) 905 KAR 2:120, Section 1(1)(c), appears to be an exception for Montessori schools which will not be guided by the same administrative regulations as independent day care centers; (2) this exception is inappropriate, given the fact that all day care centers are required to provide developmentally educational type programs; (3) the public has a right to believe that all day care centers will be operated by the same rules; (4) her clients, Mr. McLee and Mr. Estes, are directly effected by this issue and are forced to compete with Montessori preschools; (5) while their costs will increase as a result of the ratios, the costs to Montessori preschools will not increase; and (2) that compliance with the "adequate supervision" requirement in 905 KAR 2:001, Section 1(1), will be practically impossible in many situations. 905 KAR 2:001, Section 1(1) provides that: "Adequate supervision means that qualified staff devote full time and attention to the children being supervised and keep the children within sight and sound".

Ms. Cull described instances when children would not be within sight and sound of a staff person, such as when they are in the restroom. She recommended that the provision be amended to read: "...qualified staff devote full time and attention to the children being supervised and be aware of their whereabouts at all times and within range of voice."

Deputy Secretary Childers concurred with the proposed change to the definition of "adequate supervision". The Subcommittee approved the amendment.

Don Manning Miller, Coordinator with the Eastern Kentucky Child Care Coalition, stated that: (1) the administrative regulations are the result of an extensive process and do not simply represent the views of only those persons interested in quality child care; (2) the regulatory process also reflects the work, two years ago, of the Governor's Task Force, which group was composed of for-profit and not-for-profit providers, child care advocates, and academic early childhood education development specialists; (3) the Coalition believes that the proposed administrative regulations represent a very good balance of the various viewpoints and interests involved; (4) the Cabinet has worked closely with his Coalition's interests and been very responsive in addressing many of the concerns relating to licensing and certification of family child care homes; (5) certification of family child care homes is essential to rural Kentucky; (6) urged the Subcommittee to pass the administrative regulations; and (7) his Coalition believes the regulations to be workable and effective.

Representative Allen stated that the Cabinet's administrative regulations seem to continue to increase growing, and asked what will happen to Kentucky's mothers when they can no longer afford to leave their children in day care. He stated that, with the cost of living continuing to grow, the scarcity of jobs in rural areas, and more people working for minimum wage, many mothers will be forced to seek alternatives. He asked how these families are to be helped, since it certainly will not be through additional taxes.

Mr. Miller stated that: (1) he agreed there is a fine balance between quality child care improvement and corresponding costs; (2) the proposed administrative regulations represent such a balance; (3) national agencies would like to see Kentucky move to a one-to-three, or one-to-four ratio for infants; and (4) the final recommendation of one-to-five ratio places Kentucky in the middle.

Deputy Secretary Childers responded to Representative Allen's comments by stating that: (1) of the approximately 94,000 children in child care in Kentucky, the Cabinet presently subsidizes child care expenses for 28,675 of those children; (2) this figure was up from 5,00 children assisted by the Cabinet only a year and one-half ago; (3) at that time, the Cabinet was spending 500,000 per month to subsidize child care; (4) this assistance has increased to 2.5 million monthly, or 30 million yearly; (5) the Cabinet presently competes effectively for additional federal subsidies to assist greater numbers of parents and children; and (6) the state subsidizes private care through the distribution of federal monies, not through new taxes.

Representative Allen reiterated that it was good the Cabinet is seeking additional federal dollars but, in the meantime, the proposed ratio for infants will impose an immediate increase in costs to Kentucky parents.

Secretary Childers reassured the Subcommittee that the Cabinet is moving forward in good faith, and added that the Cabinet: (1) would agree to make any public pronouncement, orally or in writing; (2) will continue to compete for more federal monies; (3) will work closely with federal officials to demonstrate that Kentucky is willing to make needed changes to qualify for more money; (4) does not have the available monies to surpass all fifty states, nor does the Cabinet feel it needs to; and (5) has done the very best in promulgating the administrative regulations, considering the circumstances.

905 KAR 2:001. Definitions for Title 905 Chapter 2. This administrative regulation was amended as follows:

(1) Section 1(1), the definition for "adequate supervision" was amended by: (a) deleting the words, "keep the children within sight and sound", and inserting the words "be aware of their whereabouts at all times and within range of voice.";

(2) Section 1(7)(c), "including" was deleted, and the words, "shall be included" were inserted after "settings";

(3) Section 1(7)(d)3., deleting "one (1)", and inserting the word "kindergarten" after "grades";

(4) Section 1(21), inserting the words, ",in compliance with the Guidelines for Obtaining Child Day Care Training Approval, and herein incorporated by reference", after the word "program";

(5) Section 1(22), similar language relating to the incorporation of the "Guidelines" was added;

(6) a new Section 2 was added to: (a) provide that the July 1993 edition of the "Guidelines has been incorporated";, and (b) explain how the materials may be obtained;

(7) a summary of the "Guidelines" and the corresponding application were included; and

(8) a new Section 1(7)(d)10 was inserted as a child care setting that will be excluded from the definition of a "facility" as follows:

"10. A facility providing instructional and educational programs for children:

a. that is operated for a maximum of four (4) hours per day or twenty (20) hours per week; and

b. which a child attends for no more than two (2) hours per day or ten (10) hours per week."

Deputy Secretary Childers added that the amendment allows the Cabinet to conform to the terms of June 1990, Memorandum of Understanding between the Kentucky Department of Education and the Cabinet relating to jurisdictional regulation of purely instructional and educational programs, as opposed to day care operations.

Representative Allen stated that: (1) he wished to go on record as being opposed to the administrative regulation; and (2) in his legislative district, there will be mothers that are directly effected by the day care fee increase. He asked the Cabinet to work more closely with constituents who represent all economic levels, and try to address their concerns early on.

905 KAR 2:090. Child care facility licensure. Section 4 of this administrative regulation was amended by deleting "at all times", and inserting, after "shall", the words "be trained to apply the administrative regulations and".

905 KAR 2:100. Certification of family child-care homes. This administrative regulation was amended as follows: (1) Section 2(2), by inserting the words "be trained to apply the administrative regulations and" after "shall"; (2) Section 2(8), by inserting the words "excluding the provisions of Section 5(3)(a) and (b) of this administrative regulation which shall be met within three months of the application date." after "met". This amendment was proposed by the Cabinet to clarify that a certification will be issued in compliance with Section 5(3)(a) and (b), which establish the three month period of time in which a facility is required to obtain liability insurance and meet the training requirements;

(3) Section 2(8)(b), by deleting "new certification", and inserting the words "change of location" after "require a". This amendment reflected a change in the application process that relates only to a change of location: a facility will merely be required to submit new location information, and not be required to resubmit the documentation required for the initial application process;

(4) Section 5(1)(c), by inserting the words "in compliance with the Guidelines for Obtaining Child Day Care Training revised July 1993 incorporated by reference in 905 KAR 2:001" after "Services";

(5) Section 5(3)(b), by deleting the dollar amount "$100,000", and inserting a new dollar amount "$50,000" after the word "of", which reduced the amount of liability insurance a facility is required to obtain.

(6) Section 5(4)(c), by deleting the words, "The effective date of" and "However, the effective date of", and inserting the words "enforced beginning" after the word "be", since the effective date of an administrative regulation is governed by KRS 13A.330;

(7) Section 8(3), by deleting "four (4) years of age or under", after "A child under". This amendment conforms to statutory and the Department of Transportation requirements that a child forty (40) inches in height shall be transported in a safety seat;

(8) Section 11(7), deleting subsection (7) in its entirety. This subsection contained the Cabinet's prohibition against physical punishment. The Cabinet explained that this amendment was necessary, because the provisions in 905 KAR 2:130, prohibiting physical punishment, would apply to all types of facilities, including family child care homes. The Cabinet requested that the Subcommittee remove the letter of deficiency placed on the administrative regulation in 1992.

On the October 6, 1992, the Administrative Regulations and Review Subcommittee, approved a motion that this administrative regulation exceeded statutory authority and did not comply with legislative intent.

Senator Huff had: (1) objected to the prohibition against physical punishment found in Section 4(7); (2) stated that the Cabinet has continued to subvert legislative intent by its prohibition of corporal punishment; and (3) requested the Cabinet to remove language prohibiting "spanking" of children. Cabinet personnel had stated that the Department for Health Services does not endorse corporal punishment. Senator Huff had stated that a Barbourville children's home was closed by the Cabinet because it permitted the paddling of children, and permitted to reopen, only after he had amended a bill during the 1992 General Assembly to extend the right granted to schools under state law to discipline children to children's orphanages.

Chairman Kerr had pointed out that the prohibition in Section 7 was broad enough to prevent a parent, who was a provider, from spanking his own children. Cabinet personnel had responded that when a parent is a provider, he could not spank his own child during the hours of operation.

Chairman Kerr had concluded by stating that the Cabinet has taken a position that is clearly contrary to the legislature's position. He stated that the members of the General Assembly are the elected spokespersons for the citizens of the Commonwealth, and that the Cabinet did not have the authority to impose its philosophical ideals and policies on the citizens of the Commonwealth.

(9) Section 12(1), by deleting the entire subsection and inserting the following: "The DSS-78, Application for Family Child Care Certification, revised September 1993, and the DSS-79, Self Check List, revised September 1993, shall be herein incorporated by reference."; and

(10) A summary of the material incorporated by reference was inserted.

Representative Allen noted his opposition to the administrative regulation.

905 KAR 2:110. Child care facility provider requirements. This administrative regulation was amended as follows: (1) Section 2(1)(h), by deleting the words, "a written record of staff training", and inserting, "Written records of training participation for each center employee, including the training source, location, date, and number of clock hours obtained."; (2) Section 2(1)(n)4 and 5, by deleting subparagraph 5. in its entirety, and, in subparagraph 4, inserting the word "and" after the word "separately;"; (3) Section 3(1)(d)3, by inserting, after the word "Development", the words "including degrees in pastoral care and counseling". This modified the staff requirements for a provider, to ensure that degrees in pastoral care and counseling will be considered by the Cabinet; (4) Section 3(4)(a), by deleting, "as specified in 905 KAR 2:090, and inserting after the words "or adult" after "child"; (5) Section 3(4)(b)3, by deleting the words, "The effective date of" and "However, the effective date of", and inserting the words "enforced beginning", after "be"; and (6) Section 4(1)(b), by deleting, "result in", and inserting the words "resulting in" after "or".

Senator Huff noted his objection to the administrative regulation.

905 KAR 2:120. Child care facility health and safety standards. This administrative regulation was amended as follows: (1) Section 1(1)(c), by deleting in Line 6, the word "accreditation", and inserting in Line 4, the words "or affiliated" after "accredited"; (2) Section 4(3), by inserting the words, "and shall be required to comply with subparagraph (1) and (2) of this section" after "requirements"; (3) Section 4(6), by deleting the words "four (4) years of age or under" after the words "A child under". This amendment conforms to the provisions of KRS and Transportation Cabinet administrative regulation of that a child forty (40) inches in height shall be transported in a safety seat; and (4) Section 5(2)(a), inserting after the word "children", the following: "except after-school child care programs located on the premises of a public or a state-accredited nonpublic school and which serve only school-age children, shall not be required to have the outdoor playground area surrounded by a fence.".

Senator Huff asked the Cabinet to summarize the administrative regulation as amended. Mike Cheek, Department for Social Services, representative stated that: (1) this administrative regulation regulates the health and safety of day care for licensed centers; and (2) the amendments: (a) conform the safety seat criteria to satutory and

Transportation Cabinet standards; and (b) modify the section pertaining to a "nationally recognized educational association", to include "accredited or affiliated" facilities.

Senator Huff moved that a letter of deficiency be attached to the administrative regulation because of the Cabinet's proposed ratio reduction in the infant category found in Section 1.

Mr. Cheek noted that the Cabinet has established a phase-in period for the proposed infant ratio and maximum group size, and that these provisions will not be enforced until July 1, 1994

The Subcommittee did not approve the motion to attach a deficiency.

Department for Medicaid Services

907 KAR 1:031. Payments for home health services. This administrative regulation was amended in Section 1(4), line 1, to comply with the format and drafting requirements established by KRS 13A.220(4) and 13A.222.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Department for Local Government: Policy and Management

109 KAR 10:010. Local government economic assistance fund grants.

Board of Nursing

201 KAR 20:390. Nursing incentive scholarship fund.

Board of Podiatry

201 KAR 25:031. Continuing education.

Board of Registration for Professional Geologists

201 KAR 31:020.Compensation of board members. In response to a question by Representative Bruce as to whether the compensation of board members was being raised, agency personnel stated that the: (1) board was a new board, established during the 1992 Regular Session of the General Assembly; and (2) compensation of board members was being established at the standard rate for members of boards, $100 a day, not raised.

Economic Development Cabinet: Department of Agriculture: Fairs and Shows

302 KAR 15:010E. Administration; state aid to local fairs. This administrative regulation was filed as an emergency administrative regulation only. The ordinary administrative regulation contains numerous drafting errors. At its August, 1993 meeting, the failure to file an ordinary administrative regulation was questioned because: (1) the amendments suggested by Subcommittee staff to correct KRS Chapter 13A deficiencies: (a) could be made only to the emergency administrative regulation; and (b) would expire when the emergency administrative regulation expired, which meant that the ordinary administrative regulation would contain the same violations of KRS Chapter 13A; and (2) whether the type of emergency that led to the promulgation of this emergency administrative regulation justified the filing only of an emergency administrative regulation, rather than the filing of emergency and companion ordinary administrative regulations. Department personnel agreed to file an ordinary administrative regulation to correct the KRS Chapter 13A deficiencies after the emergency administrative regulation expires.

Natural Resources and Environmental Protection Cabinet: Division for Air Quality: New Source Standards

John Hornbeck and Kenneth Hines appeared representing the Cabinet. Mr. Hornbeck discussed the fact that there were several KRS Chapter 13A technical drafting problems including the method of incorporation by reference of federal regulations. Mr. Hornbeck agreed to work with subcommittee staff and to correct those problems in the near future. Senator Smith and Representative Bruce asked if these regulations were more stringent than the federal regulations, to which Mr. Hornbeck said "no". The following package of regulations were then approved without objection.

401 KAR 59:435. Standards of performance for small industrial-commercial-institutional steam generating units.

401 KAR 59:450. Standards of performance for portland cement plants.

401 KAR 59:455. Standards of performance for nitric acid plants.

401 KAR 59:465. Standards of performance for hot mix asphalt facilities.

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.

401 KAR 59:490. Standards of performance foe secondary lead smelters.

401 KAR 59:495. Standards of performance for secondary brass and bronze production plants.

401 KAR 59:500. Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973.

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.

Discussion on the following administrative regulations: Cabinet personnel stated that these administrative regulations: (1) attempt to adopt federal regulations without change; and (2) are similar to approximately ten administrative regulations that were promulgated three or four months ago.

Agency personnel stated that the issues raised concerning these administrative regulations also related to the other agency KAR 401 Chapter 59 administrative regulations being considered by the Subcommittee. Questions had been raised concerning: (1) whether the administrative regulations should: (a) incorporate the federal regulations by reference, pursuant to KRS 13A.2264; or (b) adopt the federal regulations without change, pursuant to KRS 13A.2267; (2) create a definitions section in each of the administrative regulations to define, "Administrator", "EPA", and "New Source Performance Standards"; and (3)(a) incorporate the "letters of delegation"; or (b) cite the delegation letters in the "RELATES TO" and "STATUTORY AUTHORITY" sections.

Cabinet personnel agreed to work with Subcommittee staff to address the issues raised.

Senator Smith and Representative Bruce asked if these administrative regulations were more stringent than the federal regulations. Cabinet personnel stated that these administrative regulations are already being enforced by the federal government, and that the state is merely assuming enforcement authority by adopting these administrative regulations.

In response to a question by Representative Bruce, cabinet personnel stated that 401 KAR 59:590, relating to grain elevators, was not more stringent than federal requirements.

401 KAR 59:535. Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

401 KAR 59:540. Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

401 KAR 59:545. Standards of performance for the phosphate fertilizer industry: diammanium phosphate plants.

401 KAR 59:550. Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

401 KAR 59:555. Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

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.

401 KAR 59:575. Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

401 KAR 59:580. Standards of performance for kraft pulp mills.

401 KAR 59:585. Standards of performance for glass manufacturing plants.

401 KAR 59:590. Standards of performance for grain elevators.

401 KAR 59:595. Standards of performance for surface coating of metal furniture.

Department for Surface Mining Reclamation and Enforcement: Bond and Insurance Requirements

Senator Smith stated that he understood that Commissioner Rosenbaum was leaving the Department of Surface Mining. Senator Smith congratulated the Commissioner on an outstanding job and wished him the very best in the future.

405 KAR 10:050. Bond forfeiture.

Inspection and Enforcement

405 KAR 12:001. Definitions for 405 KAR Chapter 12.

405 KAR 12:010. General provisions for inspection and enforcement.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:150. Eastern Kentucky Correctional Complex.

Transportation Cabinet: Department of Vehicle Regulation: Motor Vehicle Tax

601 KAR 9:012. Personalized license plates. Senator Huff asked Ms. Pullen several questions about personalized license plates. Ms. Pullen stated that personalized license plates could legally be transferred from one car to another owned by the original purchaser of the license plate, but only by actually transferring that license plate from the first car to the second car at the county clerk's office.

601 KAR 9:015. Registration of motor vehicle dealers and manufacturers.

601 KAR 9:020. Demonstrator tag limitation.

601 KAR 9:060. Commercial vehicle(s) registration plates.

601 KAR 9:065. Exempt devices.

601 KAR 9:095. Information entered into the automated vehicle information system (AVIS).

Department of Highways: Maintenance

603 KAR 3:080. Advertising devices. Although this regulation was approved, Senator Huff, Senator Smith and Representative Bruce noted their objection.

Workforce Development Cabinet: Department for Adult and Technical Education: Personnel System for Certified and Equivalent Employees

780 KAR 3:140. Certification and professional development requirements.

Facilities and Equipment

780 KAR 7:035. Technical institute standards.

Cabinet for Human Resources: Department for Social Services: Day Care

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

Department for Medicaid Services

907 KAR 1:022. Nursing facility and intermediate care facility for the mentally retarded services.

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

907 KAR 1:536. Repeal of 907 KAR 1:480, 907 KAR 1:485, 907 KAR 1:490, 907 KAR 1:495 and 907 KAR 1:535.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the September meeting upon agreement by the promulgating agency and the Subcommittee:

Natural Resources and Environmental Protection Cabinet: Division for Air Quality: Asbestos

401 KAR 58:001. Definitions and abbreviations of terms used in Title 401, Chapter 58.

401 KAR 58:020. Controlling asbestos emissions. Although this regulation was deferred by agency request, Senator Smith did engage Mr. Hornbeck in discussion on this administrative regulation. Senator Smith asked Mr. Hornbeck if they were going to work with Fort Knox and other entities to try to resolve the problems they are having in removing the existing barracks that they intend to demolish and construct new barracks. Mr. Hornbeck stated that he was working with them and that he felt rapid progress was being made and he didn't think there would be any complications in them being able to obligate their money before the end of September. Senator Smith asked what was causing the problem then. Mr. Hornbeck stated that the current regulations are more stringent than the federal guidelines for asbestos handling and until those regulations get changed, which is part of the process, we are deferring the new regulation for us to go back and reevaluate our whole regulatory strategy on this. He then stated that until they get that current regulation changed they have to look at an alternative work practise allowance. He said that is what they are doing with Fort Knox. Senator Smith then stated that there is a statute which requires the state regulations to be no more stringent than the federal regulations and therefor the state regulation exceeded statutory authority. Without agreeing to that, Mr. Hornbeck said that is an issue we are well aware of and one that they intend to address.

General Standards of Performance

401 KAR 63:036. Stage II, gasoline dispensing facilities.

Department of Education: Bureau of Learning Results Services: Assistance and Intervention Services

703 KAR 3:060. Procedures for determining rewards and sanctions.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:031. Intertrack simulcasting.

Harness Racing

811 KAR 1:015. Race officials.

811 KAR 1:055. Declaration to start; drawing horses.

The following administrative regulation was withdrawn by the promulgating agency:

Natural Resources and Environmental Protection Cabinet: Division for Air Quality: Hazardous Pollutants

401 KAR 57:041. National emission standards for hazardous air pollutants; benzene waste operations.

OTHER BUSINESS:

Cabinet for Human Resources: Department for Social Services: Child Welfare

905 KAR 1:010. Pursuant to KRS 13A.030(3), the Subcommittee had requested the Cabinet to: (1) submit information relating to the Cabinet's policy on nonsibling adoptions, established in Section 3 of this administrative regulation; and (2) be present to answer questions on the Cabinet's justification for limiting nonsibling adoptions. The Cabinet appeared before the Subcommittee at its August 4, 1993 meeting, providing: (1) some of the requested information; and (2) testimony explaining the Cabinet's justification for the policy on nonsibling adoptions.

At the August meeting, Chairman Kerr and other members, expressed concerns that the prohibition in Section 3 of the administrative regulation, against the simultaneous adoption of nonsiblings, appeared to preclude the Cabinet from fulfilling its statutory duty to consider the best interest of each and every child requested for adoption.

The Cabinet had been asked to: (1) submit additional information in support of its policy; and (2) consider an amendment to Section 3 of the administrative regulation. The Cabinet had agreed to: (1) provide additional information; (2) "take a broader perspective on its policy of nonsibling adoptions"; and (3) return to the Subcommittee's September 1993 meeting.

At the September meeting of the Subcommittee, Cabinet representatives stated that the Cabinet: (1) had taken a closer look at the prohibition in Section 3 of this administrative regulation; (2) determined that it would be in the best interest of the prospective adoptive children to amend the administrative regulation; (3) recognized that the provision: (a) prevented the administrative regulation from being applied even-handedly; and (b) should be eliminated, since the restriction prevented the filing and consideration of an application for a nonsibling child.

Cabinet legal counsel explained that the Cabinet plans to amend the administrative regulation, by the promulgation of emergency administrative and ordinary administrative regulations, as follows: (1) In Section 3(1), delete, "Proposed adoptive parents may apply to receive one child at a time, unless applying for the available members of a sibling group."; (2) delete Section 3(3) in its entirety, deleting the language "an application shall not be accepted unless a previously placed child has been in the home for a minimum of one year and the adoption legally finalized. An exception may be made when the child to be placed is a sibling of the previously placed child."

Chairman Kerr stated that by removing the prohibition, the Cabinet's test for approval or disapproval of an application for adoption will be the best interest of the child, as required by statute. The Cabinet confirmed that the statutory standard would be met.

In response to a question by Chairman Kerr, Mrs. Knepper, a prospective adoptive parent, stated that she understood that the Cabinet proposed to remove the restriction on the application for a nonsibling adoption. Chairman Kerr thanked her and her husband for bringing the issue to the Subcommittee's attention.

Chairman Kerr thanked the Cabinet for their cooperation and stated that the Subcommittee looked forward to reviewing the emergency administrative regulation containing the proposed amendment.

Senator Huff advised Mrs. Knepper that with the proposed amendment to the administrative regulation, the determination to approve or disapprove an application to place or receive a child is still a decision of the Cabinet on the basis of each case, and the best interest of the child.

The Subcommittee adjourned at 5 p.m. until October 4, 1993 at 10 a.m. in Room 149 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 AGRICULTURE AND NATURAL RESOURCES
Meeting of August 25, 1993

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, August 25, 1993, and submits the following report:

The committee took no action on the Department of Mines and Minerals administrative regulation 805 KAR 7:030.

The meeting adjourned August 25, 1993, at 2:30 p.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of September 2, 1993

The Interim Joint Committee on Education met Thursday, September 2, 1993, and approved the following administrative regulations:

Department of Education
702 KAR 3:190 - Maximum class size
703 KAR 3:205 - Management Improvement Program
704 KAR 3:405 - Superintendent Training Program and assessment process
704 KAR 2:031 - Repeal of 705 KAR 2:130 and 705 KAR 2:030

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates D2

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 D7

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 D12

The Subject Index is a general index of regulations published in VOLUME 20 of the Administrative Register, and is mainly broken down by agency.

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*Statement of Consideration Not Filed by Deadline; Regulation Expired (KRS 13A.280(2))

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