ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 20, NUMBER 6
WEDNESDAY, DECEMBER 1, 1993

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on December 7, 1993 at 10 a.m.. See **tentative** agenda on pages 1545-1548 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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Room 149, State Capitol Annex

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810 KAR 1:031 & E. Intertrack simulcasting. (Deferred from September)

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ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
32 KAR 2:160E.

KRS 121.180(1)(a) authorizes a candidate who intends to receive or expend $3,000 or less in an election to sign a request for exemption from certain campaign finance reporting requirements. KRS 121.180(1)(b) authorizes a candidate who intends to receive or spend $250 or less in an election to sign a request for exemption from all campaign finance reporting requirements. KRS 117.265 requires an individual who intends to be a write-in candidate to file a declaration of intent not later than ten (10) days preceding the election. Because other candidates are entitled according to administrative regulations promulgated by the registry to revoke exemptions previously executed if an independent candidate files for the same office at a later date, it is necessary to promulgate this emergency administrative regulation to extend the same right to a candidate who finds himself opposed by an official write-in candidate just before the election. An ordinary administrative regulation will not be filed with the Administrative Regulations Compiler because of anticipated changes in statutory provisions governing exemptions.

BRERETON C. JONES, Governor
JOSEPH H. TERRY, Chairman

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:160E. Candidate with write-in opposition, revocation of exemption.

RELATES TO: KRS 117.265, 121.180(1)(a), (b)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
EFFECTIVE DATE: October 22, 1993
EXPIRATION DATE: March 31, 1993
NECESSITY AND FUNCTION: KRS 121.180(1)(a) authorizes a candidate who intends to receive or expend $3,000 or less in an election to sign a request for exemption from certain campaign finance reporting requirements. KRS 121.180(1)(b) authorizes a candidate who intends to receive or expend $250 or less in an election to sign a request for exemption from all campaign finance reporting requirements. KRS 117.265 requires an individual who intends to be a write-in candidate to file a declaration of intent not later than ten (10) days preceding the election. Because other candidates are entitled according to administrative regulations promulgated by the registry to revoke exemptions previously executed if an independent candidate files for the same office at a later date, it is necessary to promulgate this emergency administrative regulation to extend the same right to a candidate who finds himself opposed by official write-in candidate just before the election.

Section 1. A candidate appearing on the ballot in a regular election who has signed an exemption form for that election may revoke the form and exercise a different exemption option, or revoke the exemption form and file all reports required by KRS 121.180 if a write-in candidate files for the same office by the tenth day preceding the regular election. The exemption form shall be revoked not later than five (5) days preceding the date of the election.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: October 20, 1993
FILED WITH LRC: October 22, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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 to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact person: Anita Stanley
(1) Type and number of entities affected: This emergency administrative regulation will affect any candidate in the 1993 regular election who finds himself with write-in opposition after the candidate has executed an exemption form.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: No continuing costs or savings will result from this emergency administrative regulation as it will apply only to candidates in the 1993 regular election.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The registry will likely encounter no significant change in reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: It is not anticipated that this administrative regulation will have any affect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Several alternatives were considered, but the provisions contained in this administrative regulation allow the registry to enforce the law in the most equitable manner.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Amendments to KRS 121.180 as it relates to exemptions from reporting requirements have been proposed by the agency for introduction in the 1994 regular session of the General Assembly. However, this emergency administrative regulation is necessary so that the registry may fairly enforce the law for the 1993 regular election.
(a) Necessity of proposed regulation if in conflict: This administrative regulation is necessary to allow for equitable treatment of candidates who have filed a request for exemption.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes
(6) Any additional information or comments: None
TIERING: Is tiering applied? Tiering is not applied because the

administrative regulation applies to a very limited situation and applies uniformly to all candidates for the 1993 November election.

STATEMENT OF EMERGENCY
201 KAR 20:240E

A previous amendment of this administrative regulation was found deficient by the Administrative Regulation Review Subcommittee of the Legislative Research Commission on July 2, 1993. Pursuant to KRS 13A.333(2), the regulation will expire at the adjournment of the 1994 regular session of the General Assembly. The deficiency presumably was found because the maximum amounts for several fees were raised. It has since been determined that those increases are not immediately required and may be deferred at this time. The regulation is being amended to remove the increases. However, since this agency only receives revenue from fees collected, this regulation needs to remain in effect. Any interruption would cause a fiscal hardship on the agency. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on October 15, 1993.

BRERETON JONES, Governor
ROBERTA SCHERER, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing

201 KAR 20:240E. Fees for applications and for services.

RELATES TO: KRS 314.041(5), 314.042(3), (6), 314.051(3), 314.071(1), (2), 314.073(4), (6), 314.161
STATUTORY AUTHORITY: KRS 314.131
EFFECTIVE: October 22, 1993
NECESSITY AND FUNCTION: To establish fees to carry out the provisions of KRS Chapter 314.

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect fees for applications for licensure or for registration, and for renewal or reinstatement thereof.

(2) The fees shall not exceed the amounts indicated for the following applications:

(a) Licensure as a registered nurse - seventy (70) [~~ninety (90)~~] dollars.

(b) Licensure as a licensed practical nurse - seventy (70) [~~ninety (90)~~] dollars.

(c) Biennial renewal of active license - fifty (50) [~~seventy (70)~~] dollars.

(d) Biennial renewal of inactive license - thirty-five (35) [~~fifty (50)~~] dollars.

(e) Reinstatement of license - seventy (70) [~~ninety (90)~~] dollars.

(f) Active to inactive license status - thirty-five (35) [~~fifty (50)~~] dollars.

(g) Inactive to active license status - fifty (50) [~~seventy (70)~~] dollars.

(h) Endorsement verification of Kentucky licensure or registration - twenty (20) [~~fifty (50)~~] dollars.

(i) Duplicate license or registration card or letter - twenty (20) dollars.

(j) Registration as an advanced registered nurse practitioner - seventy (70) [~~ninety (90)~~] dollars.

(k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty (50) [~~seventy (70)~~] dollars.

(l) Reinstatement of registration as an advanced registered nurse practitioner - seventy (70) [~~ninety (90)~~] dollars.

(3) An application shall not be evaluated unless current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The board shall collect fees for applications for approval of providers of continuing education and for renewal or reinstatement thereof not to exceed the following amounts:

(1) Initial provider approval - $100.

(2) Reinstatement of provider approval - $100.

(3) Biennial renewal of approval - seventy-five dollars.

(d) Individual review of continuing education offerings - thirty-five (35) dollars.

Section 3. Fees for Services. (1) The board shall collect fees for the following services not to exceed the amounts indicated:

(a) Administration of examination for registered nurse licensure - sixty (60) dollars.

(b) Administration of examination for practical nurse licensure - thirty-five (35) dollars.

(c) Verification of licensure or registration letter - ten (10) dollars.

(d) Copy of examination results or transcripts - ten (10) dollars.

(e) Nursing certificate (optional) - thirty (30) dollars.

(2) The fee for copies of statutes, regulations, and duplicated or printed materials shall be one (1) dollar minimum or shall not exceed twenty-five (25) cents per page.

(3) An applicant for licensure who takes or retakes the licensure examination shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and administration of examination fees pursuant to subsection (5) of this section.

(4) A nurse who is licensed in another state, United States territory or country and who submits an application for licensure in Kentucky as a registered nurse or a licensed practical nurse, but who is required to take or retake the licensure examination, shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and administration of examination fees.

(5) Applicants retaking the licensure examination shall:

(a) Submit fee for administration of examination prior to each time examination is taken.

(b) Submit new application and current fees if more than one (1) year has passed since date last examination was written or more than two (2) years have passed since the filing date of the original application.

(6) Graduates of foreign schools of nursing shall assume responsibility for costs incurred to submit credentials translated into English, commission on graduates of foreign nursing schools certificates, immigration documents and other documents needed to verify meeting licensure requirements.

Section 4. With the exception as stated in Section 3(5)(b) of this regulation, an application, which is not completed within one (1) year from the date the application form is filed with the board office, shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure or registration will be issued the appropriate approval, license or registration without additional fee.

Section 6. Refunds. (1) Current administration of examination fee on file for an examination candidate unable to be present for the administration of an examination due to unusual circumstances such as weather conditions, accidents, illness, family circumstances, will be refunded upon submission of written request by candidate.

(2) Overpayment of five (5) dollars or more of current fee will be refunded upon submission of written request by payer.

Section 7. A partial application fee may be held on record for one

(1) year and may be applied toward the fee to meet the requirements for licensure or registration.

Section 8. Fees properly collected by the board are nonrefundable with the exceptions as stated in Section 6 of this regulation.

Section 9. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

ROBERTA G. SCHERER, President
APPROVED BY AGENCY: October 14, 1993
FILED WITH LRC: October 22, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
301 KAR 2:220E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states which wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting administrative regulations are promulgated less than six weeks before the opening dates of the hunting season. An ordinary administrative regulation will not suffice because of insufficient time to accomplish the required state procedures during the short period between promulgation of federal hunting administrative regulations and the opening of the hunting season will preclude timely effectiveness of the administrative regulation. The emergency administrative regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
C. TOM BENNETT, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:220E. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
EFFECTIVE: October 27, 1993
NECESSITY AND FUNCTION: This administrative regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource. The framework of this administrative regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit or an anchored, stationary, or drifting boat from which hunting occurs.

(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.

(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.

(4) "Commercial guide" means any individual who accepts monetary considerations for receipt of services in assisting another individual or group in the taking of fish or wildlife.

(5) "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(6) "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. Seasons and Zones for Gun, Archery and Falconry. The following zone requirements shall apply to all migratory birds listed in this section.

(1) Ducks, coots and mergansers:

(a) Eastern duck zone: November 25 [~~26~~] through November 28 [~~29~~] and December 26 [~~23~~] through January 20 [~~17~~] east of a boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U. S. Bypass 60, north along U.S. 231 to the Indiana border.

(b) Western duck zone: November 25 [~~26~~] through November 28 [~~29~~] and December 11 [~~16~~] through January 5 [~~10~~]. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection.

(c) Falconry (eastern and western duck zones): November 5 [~~3~~] through January 31.

(2) Geese.

(a) [~~Eastern goose zone: December 13 through January 31, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to the Henderson County line then south, east and northerly along the Henderson County line to the Indiana border.~~

~~(b)~~] Western goose zone: December 11 [~~November 26~~] through January 30 [~~31~~], unless harvest quotas shall be met as established in subparagraphs 1 through 4 of this paragraph. This zone consists of the area to the west of the boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, east on I-24 to US 641, north on US 641 to US 60, northeast on US 60 to the Henderson County Line then south, east and northerly along the Henderson County Line to the Indiana border [~~described in paragraph (a) of this subsection~~]. For the purpose of controlling the goose harvest, the western goose zone is subdivided into the Ballard reporting area and associated counties and the Henderson-Union reporting area and associated counties.

1. Ballard reporting area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi River to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe.

a. If the department determines that the quota of 11,400 [~~14,600~~] Canada geese will be filled prior to January 30 [~~31~~], the goose hunting season shall close in the Ballard reporting area.

b. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

2. Counties associated with the Ballard reporting area. The counties associated with the Ballard reporting area are those portions of Ballard (excluding Ballard reporting area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the western goose zone, shall remain open for seven (7) days after the closure of the Ballard reporting area or until January 30 [~~31~~], whichever occurs first.

3. Henderson-Union reporting area. This reporting area includes Henderson County and that portion of Union County within the western goose zone.

a. If the department determines that the quota of 3,350 [~~4,300~~] Canada geese will be filled prior to January 30 [~~31~~], the goose hunting season shall close in the Henderson-Union reporting area.

b. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

4. Counties associated with the Henderson-Union reporting area. The counties associated with the Henderson-Union reporting area are those portions of Lyon, Crittenden and Livingston counties in the western goose zone shall remain open for seven (7) days after the closure of the Henderson-Union reporting area or until January 30 [~~31~~], whichever occurs first.

(b) Pennyroyal/Coal Field Goose Zone: Canada geese December 11 through January 14, Goose species other than Canada geese December 11 through January 31. This zone comprises the region east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, east on I-24 to US 641, north on US 641 to US 60, northeast on US 60 to the Henderson County line then south, east and northerly along the Henderson County line to the Indiana border; and west of the boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along US Bypass 60, north along 231 to the Indiana border.

(c) Remainder of the state: December 13 through January 31, east of a boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along US Bypass 60, north along 231 to the Indiana border.

(d) [~~(c)~~] Falconry (statewide) [~~(eastern and western goose zones)~~]: November 5 [~~3~~] through January 31.

Section 3. Limits for Gun, Archery and Falconry. The following bag and possession limits shall apply to all migratory birds listed in this section.

(1) Gun and archery.

(a) Ducks. The daily bag limit shall be three (3) and no more than two (2) mallards (no more than one (1) hen mallard), two (2) wood ducks, one (1) black duck, one (1) redhead, and one (1) pintail of either sex. Canvasbacks shall not be taken. The possession limit shall be double the daily bag.

(b) Coots. The daily bag limit shall be fifteen (15) and the possession limit shall be thirty (30).

(c) Mergansers. The daily bag limit shall be five (5) of which no more than one (1) shall be a hooded merganser. Possession limit shall be double the daily bag limit.

(d) Geese: The bag limit shall be seven (7) with no more than two (2) Canada geese and two (2) white-fronted geese. The possession limit shall be double the daily bag limit.

(2) Falconry. The bag and possession limits are three (3) and six (6) respectively, of any legal species listed in this administrative regulation, singly or in aggregate.

Section 4. Except as provided in Section 7 of this administrative regulation, shooting hours for migratory species shall be permitted one-half (1/2) hour before sunrise to sunset.

Section 5. (1) Pursuant to 301 KAR 2:044, Section 7(2)(a), the possession and use of lead shot shall be prohibited for the taking of ducks, geese, coots and mergansers.

(2) Steel shot larger than F shall not be in a hunter's possession while hunting.

(3) Beginning July 1, 1994, no shotshells longer than three and one-half (3 1/2) inches or shot size larger than T shall not be used or in possession while hunting species listed in this administrative regulation.

Section 6. Wildlife Management Area Blind Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 7 of this administrative regulation.

(1) Permanent blinds shall not be permitted. Decoys and temporary blinds shall be removed at the end of each hunting day.

(2) Blinds shall not be established less than 200 yards from any other blind or waterfowl refuge areas.

(3) No more than four (4) persons shall occupy a single blind at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this administrative regulation.

Section 7. Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below. Pit and blind restrictions described in this section and Section 10 of this administrative regulation shall not apply to periods of the falconry season as described in Section 4 of this regulation that do not coincide with waterfowl gun hunting seasons.

(1) Ballard Wildlife Management Area, except the Mitchell [~~Miller~~] Tract, located in Ballard County.

(a) Species, seasons and bag limits.

1. Geese: December 14 [~~8~~] through January 30 [~~31~~] or until the Ballard Reporting Area quota is reached.

2. Ducks, coots and mergansers: December 14 [~~16~~] through January 5 [~~10~~].

3. Daily bag limits.

a. Canada geese. The daily bag limit on Ballard Wildlife Management Area is two (2) per day.

b. Other geese: same as state bag limits;

c. Ducks, coots and mergansers. Same as state bag limits.

4. No hunting is permitted on Sundays, Mondays, Christmas and New Year's day.

5. No more than three (3) persons shall occupy a single blind at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. Any hunter under the age of eighteen (18) years shall be accompanied by an adult. Any person whose transportation to and from blinds is furnished by the department shall have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours for migratory species listed in this administrative regulation shall be permitted one-half (1/2) hour before sunrise to 12 ~~noon~~.

(d) The Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of Ballard Wildlife Management Area shall be [~~is~~] closed to all species listed in this regulation from October 15 through March 15.

(2) Swan Lake Wildlife Management Area located in Ballard County.

[~~(a) Closed areas.~~] Swan Lake, adjacent wetlands and uplands as marked by signs shall be [~~are~~] closed to hunting, fishing and trespass from October 15 through March 15 as described in 301 KAR 4:050.

[~~(b) Open areas. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this administrative regulation.~~]

(3) Paintsville Lake Wildlife Management Area in Johnson and Morgan counties and Dewey Lake wildlife Management Area in Floyd County shall be [~~are~~] open to hunting of all legal species listed in this administrative regulation.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Long Creek Pond, the eastern one-third (1/3) of Smith Bay, and the eastern two-thirds (2/3) of Duncan Bay shall be [~~are~~] closed to all activity from November 1 through March 15 as indicated by signs and buoys. The Environmental Education Center and Energy Lake shall be [~~are~~] closed to hunting of all species listed

in this administrative regulation.

(b) LBL permit. An annual LBL hunting permit shall be required for hunting of all legal species listed in this regulation on all shoreline areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section. Hunting of any species listed in this administrative regulation shall not be permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall be removed at the end of each hunting day.

(5) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall be closed to all hunting, fishing, boating and molesting of all species listed in this administrative regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed through March 15 as marked by buoys and signs. Boating shall be allowed but hunting shall be prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 from October 15 through March 15.

(b) Blinds. Permanent blinds shall remain within ten (10) yards of the assigned numbered blind marker within the two (2) areas described as follows:

1. Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek;

2. Beginning at the Pryor's Creek Light extending south along the western shore of Barkley Lake to the boat ramp at the end of Land Between the Lakes Road 204 thence to the west side of the Cumberland River Channel, marked with buoys, to river mile 73.5, thence north along the west side of the Cumberland River channel, marked with buoys, to the Pryor Creek Light. All other blinds within this described area shall be temporary.

(6) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Hunting shall be permitted only from permanent blinds constructed by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. Hunting shall be allowed from permanent blinds constructed by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(c) Shooting hours for migratory species listed in this administrative regulation shall be permitted from one-half (1/2) hour before sunrise to 2 p.m.

(d) When the Ohio River reaches a level that requires boat access to the units, hunting shall be allowed from boats spaced 200 yards apart, without regard to the department blinds.

(e) Sauerheber Unit.

1. On the Crenshaw and Duncan Tracts, hunting shall be by advanced application or as otherwise authorized, waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. [~~Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours.~~]

2. Waterfowl hunting only shall be allowed on the Crenshaw and Duncan II tracts during the waterfowl season. The Crenshaw and Duncan II tracts shall be closed to all other hunting from October 15 through March 15.

3. Waterfowl hunters shall have no more than fifteen (15) shells in their possession when hunting on the Crenshaw and Duncan tracts.

4. The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker four (4) and six (6) on state road 268 and bounded by the Ohio River on the north and Tram Road on the east shall be closed to all hunting, fishing, boating and trespassing from October 15 through March 15.

(7) Ohio River Waterfowl Refuge located in Livingston County shall be closed to all hunting and the islands closed to all trespass from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 [~~and Stewart Island~~].

(8) Westvaco Wildlife Management Area located in Carlisle and Hickman Counties:

(a) The area posted by signs known as and located as follows: [~~s south of Highway 1217 (also known as Fish Lake or Lower River Road), the Brown and Morgan tracts east of Highway 1217, the Shadoan Tract north of the Brown Tract and~~] the portion [~~of the Jackson Tract~~] south of the Westvaco access road and [~~as~~] posted by signs, shall be closed from November 1 [~~October 15~~], through March 15.

(b) Westvaco permit. An annual Westvaco Hunting Permit shall be] required for hunting all legal species on the Westvaco Wildlife Management Area.

(9) West-central Kentucky. The region contained within the boundaries beginning at the northwest corner; junction of US Hwy 41A and the Webster-Hopkins County line, then southeast along US Hwy 41A to KY Hwy 85, east on KY 85 to KY Hwy 70, southeast on KY Hwy 70 to the Muhlenberg County line, north, and east along the Muhlenberg County line to the Green River, north along the Green River to Rough River, upstream on Rough River to the Ohio-Grayson County line, south along the Ohio-Grayson County Line to the Butler County Line, southeast along the Butler County line to KY Hwy 79, southwest along KY Hwy 79 to KY Hwy 70, west along KY Hwy 70 to the Muhlenberg-Ohio-Butler County lines (near Rochester), then south, west, and north along the Muhlenberg County line to the corner of the Muhlenberg-Christian-Hopkins County lines, west along the Hopkins-Christian County line to KY Hwy 109, north along Hwy 109 to KY Hwy 814, northeast along KY Hwy 814 to the Webster County Line:

(a) Canada geese: January 8 through January 14;

(b) Bag limit: Two (2) Canada geese per day. Possession limit shall be twice the daily bag limit;

(c) Shooting hours for Canada geese shall be one-half (1/2) hour before sunrise to sunset;

(d) All persons hunting Canada geese in the West-central Kentucky Special hunt region and who are required to have state and federal waterfowl stamps shall also have in their possession while hunting Canada geese a special Canada goose hunting permit for the region;

(e) Permit includes a Canada goose harvest survey that shall be filled out and returned to the department by January 21, 1994, regardless of whether any Canada geese are harvested. Permit holders who fail to return their completed survey may not be issued a permit the following year.

(10) Peabody Wildlife Management Area located in Muhlenburg and Ohio counties. The areas posted by signs known as and located as follows are posted as wildlife refuges and shall be closed to all unauthorized activities from October 15 through March 15 except those lakes listed in 301 KAR 4:100 are closed until July 1:

(a) Gibralter Mine, the region east of Rockport Road, south of the Western Kentucky Parkway, north, east and west of Pond Creek, south and east of the P&M Haul Road and as posted by signs;

(b) Sinclair Mine, the region east of the railroad tracks, south of the haul road, west and north as posted by signs;

(c) Homestead, the region south, east and west of the haul road, north of the Green River as posted by signs;

(11) Higginson-Henry Wildlife Management Area located in Union County. The region north of KY Hwy 56, west of Anderson Creek, south of the wildlife management area boundary, east of the wildlife management area entrance road is posted as a wildlife refuge and shall be closed to all access unless otherwise authorized.

(12) Bath, Rowan, Menifee and Morgan counties, including Cave Run Lake (except that portion of Morgan County associated with Paintsville Lake):

(a) Season and administrative regulations:

1. Canada geese: December 13 through December 19;

2. Bag limit: One (1) Canada goose per day. Possession limit shall be twice the daily bag limit;

3. Shooting hours for Canada geese in these counties (except that portion of Morgan County associated with Paintsville Lake) shall be one-half (1/2) hour before sunrise to 2 p.m.;

4. All persons hunting Canada geese in Bath, Rowan Menifee and Morgan counties (except that portion of Morgan County associated with Paintsville Lake) who are required to have state and federal waterfowl stamps shall also have in their possession while hunting Canada geese a special Canada goose hunting permit for the region;

5. Permit includes a Canada goose harvest survey that shall be filled out and returned to the department by January 21, 1994, regardless of whether any Canada geese are harvested. Permit holders who fail to return their completed survey may not be issued a permit the following year;

6. The region within the boundaries of KY Hwy 801 north to KY Hwy 1274, then west along KY Hwy 1274 to KY Hwy 36, southwest along KY Hwy 36 to KY Hwy 211, south along KY Hwy 211 to US Hwy 60, then east along US Hwy 60 to KY Hwy 801 shall be closed to goose hunting;

7. Seasons for geese other than Canada geese shall be closed;

(b) Breech and muzzle-loading shotguns may be used for duck hunting along the shoreline portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(13) [~~(9)~~] Hunting of all species listed in this administrative regulation is not permitted on the following areas:

(a) The portion of Grayson Wildlife Management Area located in Carter and Elliott counties: within the no wake zone at the dam site marina, from the shores of Camp Webb and the state park and on Deer Creek Fork of Grayson Lake. All other portions shall be [~~are~~] open.

(b) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(c) Cane Creek Wildlife Management Area located in Laurel County.

(d) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(e) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(f) Mill Creek Wildlife Management Area located in Jackson County.

(g) Beech Creek Wildlife Management Area located in Clay County.

~~[(10) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, shall be closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shore line portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.]~~

(14) ~~[(11) Ohio County south of Rough River, Muhlenburg County, except for the portion south of US Highway 62 and west of State Route 181, Butler County west of State Route 79, Hopkins County north of State Route 70, south of US Highway 41A, east of State Route 614 and State Route 109, and south of the Western Kentucky Parkway,]~~ Christian County north of Highway 68/80 ~~[State Route 80]~~ shall be closed to Canada goose hunting. Bell County south of Route 119 and east of Route 25E, Pulaski and McCreary Counties east of US Highway 27 and Laurel, Clay, Whitley, Perry, Knott and Breathitt Counties shall be closed to all goose hunting. ~~[In addition all designated goose refuge lakes within the western Kentucky coal fields are closed to all waterfowl hunting.]~~

(15) [~~(12)~~] Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre waterfowl refuge ~~[wetland]~~ designated by signs and painted boundary markers shall be closed to the public from October 15 through March 15.

(16) [~~(13)~~] Lake Cumberland, Pulaski County.

(a) Wesley Bend, the area bounded to the north, west and south by Fishing Creek and to the east by Beech Grove Road and Fishing Creek Road shall be closed to the public from October 15 through March 15.

(b) Yellowhole, the area bounded to the east and north by Fishing Creek, to the west by Fishing Creek Road and the south by Hickory Nut Road shall be closed to the public from October 15 through March 15.

(17) [~~(14)~~] Blind restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas.

(a) Permanent blinds shall be registered on a permit issued by the US Army Corps of Engineers. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall be issued for each permanent blind. Only one (1) permit shall be issued per hunter per area. Permittees who have not constructed a blind at the designated location by November 20 shall forfeit their permit.

(b) Blinds not occupied by permittees by the opening of shooting hours of any day shall be available for use by other hunters on a first come - first served basis for the remainder of that day.

(c) Permittees shall not lock blinds so as to prevent use by other hunters in the absence of the permittee.

(d) Permanent blinds shall be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved by the department. Permittees who fail to remove their blind within thirty (30) days after the close of the waterfowl season shall forfeit the opportunity to obtain a blind on this area the following year.

(e) Permittees shall be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, Paintsville Lake and Taylorsville Lake Wildlife Management Areas. Applicants for blind permits shall present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall be assigned to another applicant according to the following procedure:

1. Five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present).

2. Any forfeited blinds shall be assigned to those people in the order they were drawn.

(f) Temporary blinds shall be permitted on the above listed lakes in accordance with the administrative regulations specified under Section 6 of this administrative regulation.

(18) [~~(15)~~] Waterfowl shooting hours shall be from one-half (1/2) hour before sunrise to 2 p.m. on the following wildlife management areas: Green River in Adair and Taylor Counties, Kaler Bottoms in Graves County, Obion Creek in Hickman County, Peabody in Muhlenburg and Ohio Counties, Peal in Ballard County, Westvaco in Carlisle County and White City in Hopkins County.

(19) [~~(16)~~] Taylorsville Lake Wildlife Management Area, located in Anderson, Nelson and Spencer Counties. That portion east of Van Buren Boat Ramp as marked by buoys and signs shall be closed to all hunting, fishing, boating, and trespassing during the period from the first Monday following the quota deer hunt in November through

March 1.

(20) [(17)] Fulton County shall remain open to Canada goose hunting through February 14 [12], unless closed prior to this date under the provisions of Section 2 of this regulation.

Section 8. Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt geese [waterfowl] within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area permit issued by the department shall be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall be charged for each commercial waterfowl hunting area permit. These permits shall expire at the end of waterfowl hunting season.

(b) Persons operating more than one (1) commercial waterfowl hunting area shall obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

(a) Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall obtain a free migratory goose [waterfowl] hunting area permit which shall expire at the end of waterfowl hunting season.

(b) The holder of a free migratory goose [waterfowl] hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of waterfowl hunting rights or privileges, in writing, on forms provided by the department.

(c) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Ohio and Mississippi River goose [waterfowl] hunters. Persons hunting goose [waterfowl] on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall carry on their person a daily waterfowl harvest register form (G-32) provided by the department. When hunting in a party, one (1) hunter of the party may possess the waterfowl harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms. Persons desiring commercial goose [waterfowl] hunting area permits, migratory waterfowl hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson- Union Reporting Area shall apply by writing to the Sloughs Wildlife Management Area, 9956 Hwy. 268, Corydon, Kentucky 42406.

Section 9. Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on daily waterfowl harvest register forms (G-32) provided by the department.

(b) The permittee shall, during the goose [waterfowl] season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violation of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports these violations to a conservation officer.

(2) Migratory goose [waterfowl] hunting area permit holders.

(a) At all times during the goose [waterfowl] season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all goose [waterfowl] hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese [waterfowl] taken.

(c) The permittee shall, during the goose [waterfowl] season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and [waterfowl] harvest record to the address indicated on the form. The permittee shall hold duplicate copies of the forms for a period of two (2) months after the end of the goose [waterfowl] season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting geese [waterfowl] on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson- Union Reporting Areas shall:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of geese [waterfowl] taken.

(b) Persons hunting geese [waterfowl] on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese [waterfowl] taken.

3. Mail or hand deliver the completed original waterfowl harvest register so it is received by no later than Monday of each week, to the address indicated on the form.

Section 10. General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area.

(1) It is unlawful to hunt waterfowl except from a blind, unless waterfowl hunting is conducted in flooded, standing timber.

(2) It is unlawful to establish or use any blind within 100 yards of any other blind.

(3) It is unlawful to establish or locate any blind within fifty (50) yards of any property line.

(4) No more than five (5) persons shall occupy a single blind at the same time.

(5) A hunter shall possess only one (1) shotgun while occupying a blind.

Section 11. Waterfowl Stamp Requirements. Individuals hunting waterfowl shall possess appropriate state and federal waterfowl stamps as required by KRS 150.330 and 150.603.

C. TOM BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: August 27, 1993

FILED WITH LRC: October 27, 1993 at 2 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:060E

In order to continue to operate in accordance with KRS Chapter 196, the Department of Corrections needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policies must be revised immediately to allow the Northpoint Training Center to come into compliance with national accreditation standards prior to a November audit by the American Correctional Association. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on October 15, 1993 in accordance with KRS Chapter 13A.

BRERETON JONES, Governor
JACK C. LEWIS, Commissioner

DEPARTMENT OF CORRECTIONS

501 KAR 6:060E. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: October 19, 1993
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 October 11 [~~August 12~~], 1993, are incorporated by reference and shall be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-05-01 Extraordinary Occurrence Reports
NTC 01-10-01 Legal Assistance for Staff
NTC 01-11-01 Political Activities of Merit Employees
NTC 01-15-01 Establishment of the Warden as Chief Executive Officer
NTC 01-17-01 Relationships with Public, Media and Other Agencies
NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
NTC 02-03-01 Fiscal Management: Audits
NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Accounts
NTC 04-01-01 Training and Staff Development
NTC 04-04-01 Firearms and Chemical Agents Training
NTC 06-01-01 Offender Records (Amended 10/11/93)
NTC 06-01-02 Records - Release of Information
NTC 06-01-03 Taking Offender Record Folders onto the Yard
NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01 Safety Standards
NTC 10-01-01 Special Management Unit (Amended 10/11/93)
NTC 10-02-01 Protective Custody Unit
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards and Regulations for Food Service Employees
NTC 11-06-01 Inspection and Sanitation
NTC 11-07-01 Purchasing and Storage of Food Products
NTC 12-01-01 Institutional Inspection
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens (Amended 10/11/93)
NTC 12-02-02 Issuance of Personal Hygiene Products
NTC 13-01-01 Emergency Medical Care Plan
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products [~~(Amended 8/12/93)~~]
NTC 13-05-01 Dental Services [~~(Amended 8/12/93)~~]
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease [~~(Amended 8/12/93)~~]
NTC 13-20-02 Infection Control [~~(Amended 8/12/93)~~]
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care and Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving, Viewing, Handling and Storage of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures [~~(Amended 8/12/93)~~]
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail [~~(Amended 8/12/93)~~]
NTC 15-03-02 Rules and Regulations for General Population Dormitories (Amended 10/11/93)
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations (Amended 10/11/93)
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits [~~(Amended 8/12/93)~~]
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property
NTC 17-01-03 Unauthorized Inmate Property

NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-01-05	State Issue and Required Inmate Clothing (Amended 10/11/93)
NTC 17-03-01	Assessment/Orientation (Amended 10/11/93)
NTC 18-01-01	Preparole Progress Report
NTC 18-02-01	Classification
NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form
NTC 18-05-01	Transfers of Inmates
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Educational Programs
NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 23-03-01	Marriage of Inmates
NTC 24-04-01	Honor Status [(~~Amended 8/12/93~~)]
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 25-03-01	Inmate Release Procedure
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 11, 1993
FILED WITH LRC: October 19, 1993 at 11 a.m.

STATEMENT OF EMERGENCY
501 KAR 6:120E

In order to continue to operate in accordance with KRS Chapter 196, the Department of Corrections needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policies must be revised immediately to allow the Blackburn Correctional Complex to come into comoliance with national accreditation standards prior to a November audit by the American Correctional Association. This emergency regulation shall be replaced by the ordinary administrative regulation filed with LRC on October 15, 1993 in accordance with KRS Chapter 13A.

BRERETON JONES, Governor
JACK C. LEWIS, Commissioner

DEPARTMENT OF CORRECTIONS

501 KAR 6:120E. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: October 19, 1993
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by 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 October 11, 1993, are incorporated by reference [~~on October 15, 1992~~] and shall [~~hereinafter should~~] be referred to as Blackburn Correctional Complex 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 8 a.m. to 4:30 p.m.

BCC 01-05-01	Duty Officer and Acting Warden
BCC 01-07-01	Extraordinary Occurrence Reports
BCC 01-09-01	Legal Assistance for Staff
BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-15-01	Internal Affairs Office
BCC 01-16-01	Tours of Blackburn Correctional Complex
BCC 01-19-01	Inmate Access to BCC Staff (Amended 10/11/93)
BCC 02-01-01	Inmate Canteen [(~~Amended 10/15/92~~)]
BCC 02-02-01	Fiscal Responsibility [(~~Amended 10/15/92~~)]
BCC 02-02-02	Fiscal Management: Accounting Procedures [(~~Amended 10/15/92~~)]
BCC 02-02-03	Fiscal Management: Checks [(~~Amended 10/15/92~~)]
BCC 02-02-04	Fiscal Management: Budget [(~~Amended 10/15/92~~)]
BCC 02-02-05	Fiscal Management: Insurance [(~~Amended 10/15/92~~)]
BCC 02-02-06	Fiscal Management: Audits [(~~Amended 10/15/92~~)]
BCC 02-04-01	Billing Method for Health Services Staff Paid by Personal Service Contract [(~~Amended 10/15/92~~)]
BCC 02-05-01	Property Inventory [(~~Amended 10/15/92~~)]
BCC 02-06-01	Purchasing [(~~Amended 10/15/92~~)]
BCC 02-07-01	Inmate Personal Accounts [(~~Amended 10/15/92~~)]
BCC 04-02-01	Firearms Training (Amended 10/11/93)
BCC 04-03-01	Educational Assistance Program
BCC 05-01-01	Inmate Participation in Authorized Research
BCC 06-01-01	Storage of Expunged Records
BCC 06-02-01	Records - Release of Information
BCC 06-02-02	Offender Records
BCC 06-03-01	Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01	Natural Disaster Plan (Tornado)
BCC 08-03-01	Emergency Preparedness Plan Manual
BCC 08-04-01	Fire Safety Plan, Drills and Related Staff Duties (Amended 10/11/93)
BCC 08-04-02	Immediate Release of Inmates from Locked Areas (Amended 10/11/93)
BCC 08-05-01	Duties of Fire Safety Officer
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
BCC 08-07-01	Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01	Inclement Weather/Emergency Condition Operation (Amended 10/11/93)
BCC 09-02-01	Restricted Areas (Amended 10/11/93)
BCC 09-02-02	Inmate Pass System to Restricted Areas
BCC 09-02-03	Regulation of Inmate Movement
BCC 09-02-04	Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30) (Amended 10/11/93)
BCC 09-03-01	Inmate Identification
BCC 09-04-02	Complex Entry & Exit
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts
BCC 09-07-01	Drug Abuse and Intoxicants Testing (Amended

10/11/93)
BCC 09-08-02 Use of Restraints
BCC 09-09-01 Population Counts and Count Documentation (Amended 10/11/93)
BCC 09-10-03 Development of Institutional Post Orders
BCC 09-10-04 Governmental Services, Study Release Officer Post Orders (Amended 10/11/93)
BCC 09-10-05 Unit A-1 Post Orders
BCC 09-10-06 Recreation Post Orders: Observation
BCC 09-10-07 Entrance Gate Post Orders
BCC 09-10-08 Visiting Area Post Orders
BCC 09-10-09 Security Staff General Orders
BCC 09-10-10 Dining Room Officer Post Orders
BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment
BCC 09-13-01 Perimeter Patrol
BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01 Search Policy/Disposition of Contraband (Amended 10/11/93)
BCC 09-16-01 Security Activity Logs
BCC 09-17-01 Institutional Supervisor Inspections
BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01 Duties and Responsibilities of the Institutional Captain (Amended 10/11/93)
BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor
BCC 09-20-01 Inmate Death
BCC 09-21-01 Tool Control
BCC 09-22-01 Emergency Communication System
BCC 10-01-01 Special Management Inmates (Amended 10/11/93)
BCC 10-01-02 Short-Term Administrative Segregation Holding Area (Amended 10/11/93)
BCC 11-01-01 Menu and Special Diets (Amended 10/11/93)
BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation (Amended 10/11/93)
BCC 11-03-01 Food Service: Meals (Amended 10/11/93)
BCC 11-04-01 Dining Room Guidelines
BCC 11-05-01 Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 11-06-01 Purchasing, Storage and Farm Products (Amended 10/11/93)
BCC 11-07-01 Food Service Operations Manual
BCC 12-02-01 Personal Hygiene Items
BCC 12-02-02 Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities (Amended 10/11/93)
BCC 12-05-01 Barber Shop Services
BCC 12-06-01 BCC Housekeeping Plan
BCC 13-01-01 Sick Call and Pill Call (Amended 10/11/93)
BCC 13-02-01 Administration and Authority for Health Services
BCC 13-03-01 Provisions of Health Care Delivery (Amended 10/11/93)
BCC 13-04-01 Licensure and Training Standards (Amended 10/11/93)
BCC 13-05-01 Medical Alert System
BCC 13-06-01 Health Care Practices
BCC 13-07-01 Emergency Medical Care Plan (Amended 10/11/93)
BCC 13-07-02 Emergency and Specialized Health Services (Amended 10/11/93)
BCC 13-07-03 Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent (Amended 10/11/93)
BCC 13-08-01 Inmate Health Screening and Evaluation (Amended 10/11/93)
BCC 13-09-01 Prohibition on Medical Experimentation
BCC 13-10-01 Dental Services (Amended 10/11/93)
BCC 13-11-01 Suicide Prevention and Intervention Program
BCC 13-12-01 Use of Pharmaceutical Products (Amended 10/11/93)
BCC 13-12-02 Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01 Inmate Health Education (Amended 10/11/93)
BCC 13-14-01 Management of Serious and Infectious Diseases (Amended 10/11/93)
BCC 13-15-01 Informed Consent (Amended 10/11/93)
BCC 13-16-01 Health Records (Amended 10/11/93)
BCC 13-17-01 Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 13-19-01 Physicians Referrals/Continuity of Care (Amended 10/11/93)
BCC 13-20-01 Chronic and Convalescent Care (Amended 10/11/93)
BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers (Amended 10/11/93)
BCC 13-23-01 First Aid Kits
BCC 14-01-01 Office of Public Advocacy Attorney Visits
BCC 14-02-01 Law Library (Amended 10/11/93)
BCC 14-03-01 Inmate Grievance Procedure
BCC 14-04-01 Inmate Rights and Responsibilities (Amended 10/11/93)
BCC 14-05-01 Inmate Claims
BCC 14-06-01 Legal and Support Services for Indigent Inmates
BCC 15-02-01 Meritorious Living Unit (B-1)
BCC 15-02-02 Room Assignment
BCC 15-03-01 Rules and Regulations for Dormitories (Amended 10/11/93)
BCC 15-04-01 Restoration of Forfeited Good Time
BCC 15-05-01 Extra Duty Assignments (Amended 10/11/93)
~~[BCC 15-06-01 Due Process/Disciplinary Procedures (Deleted 10/11/93)]~~
BCC 16-01-01 Inmate Furloughs (Amended 10/11/93)
BCC 16-02-01 Visiting
BCC 16-03-01 Inmate Packages
BCC 16-03-02 Outgoing Inmate Packages
BCC 16-03-03 Inmate Correspondence
BCC 17-02-01 Authorized Inmate Personal Property
BCC 17-03-01 Processing of New Inmates From Local Jails
BCC 18-01-01 Classification: Institutional Classification and Reclassification
BCC 18-02-01 Racial Balance in Living Areas (Amended 10/11/93)
BCC 19-01-01 Inmate Work Programs
BCC 19-02-01 Classification of Inmates to Governmental Service Program
BCC 19-03-01 Correctional Industries (Amended 10/11/93)
BCC 20-01-01 Academic and Vocational School (Amended 10/11/93)
BCC 20-02-01 College Programs
BCC 20-04-01 Educational Program Evaluation
BCC 20-05-01 Educational Program Planning
BCC 20-06-01 Academic and Vocational Curriculum
BCC 21-01-01 Library Services
BCC 22-01-01 Arts and Crafts/Production and Sale of Items
BCC 22-02-01 Privileged Trips
BCC 22-03-01 Recreational Employees
BCC 22-04-01 Recreation and Inmate Activities
BCC 22-04-02 Inmate Clubs and Organizations
BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs
BCC 22-04-04 Recreation Program Availability
BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials
BCC 22-06-01 Music Club
BCC 22-08-01 Unit Recreation Program
BCC 22-09-01 Use of Inmates in Recreation Programs
BCC 23-01-01 Religious Services (Amended 10/11/93)
BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers

BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to Unit Director
BCC 24-03-01 Social Services
BCC 25-01-01 Inmate Check Out Procedure (Amended 10/11/93)
BCC 25-02-02 Temporary Release/Community Center Release
BCC 25-05-01 Supplemental Preparole Progress Reports
BCC 26-01-01 Citizen Involvement and Volunteer Service Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: October 11, 1993
FILED WITH LRC: October 19, 1993 at 11 a.m.

STATEMENT OF EMERGENCY
601 KAR 1:040E

This emergency administrative regulation allows Kentucky to comply with PL 102-240, Section 4005 of Title IV and the implementing federal regulations 49 CFR Part 1023. The new federal requirement is that a motor carrier company authorized to operate by the Interstate Commerce Commission (ICC) only be required to register in its base state. The ICC regulations were effective September 1, 1993. In late August, 1993, a national group completed the "Procedures Manual for the Implementation of the Single State Registration System." An emergency exists because Kentucky intends to participate in the Single State Registration System and, since all motor carriers are required to be registered by December 31, 1993, implementation must take place immediately. There was not sufficient time after the national procedures were developed to prepare Kentucky's procedures, promulgate the administrative regulations in the ordinary manner and have the regulations in effect in time to register all of the motor carrier companies based in Kentucky by December 31. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on October 15, 1993.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:040E. Application for operating authority and registration of motor carriers authorized to operate by the Interstate Commerce Commission.

RELATES TO: KRS Chapter 281, 49 CFR Part 1023
STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 1023
EFFECTIVE: October 22, 1993
NECESSITY AND FUNCTION: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of interstate motor carriers operating in Kentucky pursuant to authority granted by the Interstate Commerce Commission.

Section 1. Kentucky Intrastate Authority. (1)(a) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the [~~forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. The required~~] form, "Application for Operating Authority" form TC 93-13 effective April, 1993. This form [~~March, 1992~~] is incorporated by reference as a part of this administrative regulation.

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be [~~no~~] more than thirty (30) days old at the time the application is submitted to the department.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) All applications shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A [~~No~~] hearing shall not be called or authority issued upon an incomplete application.

(5) The form TC 93-13 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Office of General Counsel, [~~located on the tenth floor of the~~] State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548 [~~7650~~].

Section 2. Temporary Authority Applications. (1)(a) Applications for temporary authority shall be made to the department by petition filed in duplicate.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated.

(d)1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may submit a waiver from each carrier authorized to serve the area sought or any part thereof by filing a letter from each of the carrier waiving any objection to the temporary grant of authority.

(2) There shall also be filed with the petition verified statements from a supporting shipper or shippers. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) Description of the specific commodity or passengers to be transported;

(e) Points or areas to, from, or between which the commodities or passengers are to be transported. An estimate of the volume of traffic that will be involved and the frequency of this traffic. If service is needed to or from a territory or area rather than a specific point, a description of the territory or area and evidence of a need to justify the territorial grant of authority is required;

(f) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(g) How soon the transportation service is needed and the reasons for the time limit;

(h) How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;

(i) Statement of the consequences if this transportation service is

not made available and the circumstances which create an immediate and urgent need for the requested service; and

(j) Whether efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed above if one (1) of the following conditions exists:

(a) [If] There are no existing carriers with authority within the scope and area of the application;

(b) [if] All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) [if] There are unusual and emergency conditions; or

(d) [if] The application is for temporary approval under KRS 281.632(2)[~~, the department may issue temporary authority without following any of the requirements listed above~~].

(4) If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1) All applications for approval to transfer a certificate or permit issued by the Department of Vehicle Regulation authorizing Kentucky intrastate commerce shall be [~~made on the forms prescribed and furnished by the department and shall be~~] accompanied by a filing fee of twenty-five (25) dollars. The application shall be made on "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective April, 1993. This form [~~March, 1992~~] is incorporated by reference as a part of this administrative regulation. All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be [~~no~~] more than thirty (30) days old at the time the application is submitted to the department.

(3) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010. All applications shall be sworn to by the applicant or a responsible official acting for the applicant. A [~~No~~] hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

(6) The form TC 93-17 may be viewed, copied or obtained free of charge from the Transportation Cabinet's Office of General Counsel, [~~located on the tenth floor of the~~] State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548 [~~7650~~].

Section 4. Interstate Operating Authority - Exempt, For-hire. (1)(a) All for-hire motor carriers transporting commodities that have been exempted from the authority requirements of the Interstate Commerce Commission or is performing transportation functions that are exempt from the authority of the Interstate Commerce Commission shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate [~~or permit~~] authorizing this interstate exempt transportation.

(b) All applications for this certificate [~~or permit~~] shall be made on the [~~forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty five (25) dollars. The~~] form, TC 95-12, effective August, 1993 [~~October, 1985~~], "FORM A, Uniform Application for Registration of Motor [~~Operating Authority Issued by ICC or Those~~] Carriers Exempt from ICC Regulations".

(c) The application shall be accompanied by:

1. A twenty-five (25) dollar filing fee; and

2. A statement of reasons [~~a copy of the applicant's operating authority issued by the Interstate Commerce Commission, except where~~] the transportation activities are exempted from federal regulation[~~, in which event the application shall be for authority to transport persons or property under the particular exemption or exemptions of the Federal Motor Carrier Act~~].

(2)(a) All applications and exhibits shall be typewritten or printed legibly in ink.

(b) Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(c) All applications shall [~~must~~] be sworn to by the applicant or a responsible official acting for the applicant.

(3) If the motor [~~The department may issue a Kentucky interstate common carrier certificate, a Kentucky interstate irregular route common carrier certificate, and a Kentucky interstate contract carrier permit, all pursuant to the interstate authority. In the event the~~] carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate [~~or permit~~] restricted to the federally exempted activities as may be appropriate.

(4) The form TC 95-12 may be obtained free of charge from the Transportation Cabinet's Department of Vehicle Regulation, Division of Motor Carriers located on the third floor of the State Office Building, 501 High Street, Frankfort, Kentucky. Their mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-4540.

Section 5. Interstate Operating Authority - For-hire Motor Carriers Authorized by the Interstate Commerce Commission. (1) 49 CFR Part 1023 as effective May 18, 1993 shall govern the registration of the for-hire motor carriers which meet the following criteria:

(a) Those whose principal place of business is Kentucky; and

(b) Those which are operating in interstate commerce pursuant to authority granted by the Interstate Commerce Commission.

(2) The "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of for-hire motor carriers operating pursuant to authority granted by the Interstate Commerce Commission.

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 CFR Part 1023.

(4) The Kentucky fee for the issuance of the registration receipt required by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

(5) The "Procedure Manual for the Single State Registration System" is incorporated by reference as a part of this administrative regulation. A copy of it may be viewed or copied at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

Section 6. [~~5.~~] Contract Carrier Permit; Intrastate. (1) All applications for operating authority to engage in intrastate commerce as a

contract carrier shall be made on the form incorporated by reference in Section 1 of this regulation [~~and shall be accompanied by a filing fee of twenty-five (25) dollars~~] and be in conformity with this administrative regulation and 601 KAR 1:045.

(2) Each application shall include:

(a) A filing fee of twenty-five (25) dollars; and

(b) Two (2) copies of the contract under which the applicant desires to operate.

(3) The contracts shall be executed by the applicant and shipper, and shall set out:

(a) [~~, among other things,~~] The rates applicable;

(b) [~~and~~] The extent and scope of the activity covered by the contract; and

(c) The minimum amount of freight to be shipped.

(4) Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(5) At least one (1) of the contract copies shall have original signatures.

(6) The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department;

(b) Made a part of the permit; and

(c) [~~be~~] Briefly set out on the vehicle identification card carried in the vehicle operated by the contract carrier.

Section 7. [~~6.~~] Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICC. All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property or passengers in intrastate commerce, by an applicant who is a single state operator but also desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority.

Section 8. (1) An applicant who only wants to transport exempt commodities pursuant to 601 KAR 1:090 or KRS 281.625 shall apply on form TC 95-14, "Application for Kentucky Irregular Route Truck Certificate, Intrastate Authority - Exempt Commodities" last revised in August, 1993.

(2) The form TC 95-14 is incorporated by reference as a part of this administrative regulation. A copy of it may be viewed, copied, or obtained at the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
STEPHEN REEDER, Deputy Secretary
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 22, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
601 KAR 1:101E

This emergency administrative regulation allows Kentucky to comply with PL 102-240, Section 4005 of Title IV and the implementing federal regulations 49 CFR Part 1023. The new federal requirement is that a motor carrier company authorized to operate by the Interstate Commerce Commission (ICC) only be required to register in its base state. The ICC regulations were effective September 1, 1993. In late August, 1993, a national group completed the "Procedures Manual for the Implementation of the Single State Registration System." An emergency exists because Kentucky intends to participate in the Single State Registration System and, since all motor carriers are required to be registered by December 31, 1993, implementation must take place immediately. There was not sufficient time after the national procedures were developed to prepare Kentucky's procedures, promulgate the administrative regulations in the ordinary manner and have the regulations in effect in time to register all of the motor carrier companies based in Kentucky by December 31. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on October 15, 1993.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:101E. Proof of liability and cargo insurance.

RELATES TO: KRS Chapter 281, 49 CFR Parts 387, 1023, 1043
STATUTORY AUTHORITY: KRS 281.600, 49 CFR Parts 387, 1023, 1043
EFFECTIVE: October 22, 1993
NECESSITY AND FUNCTION: To establish a system of insurance filings for all motor carriers operating in intrastate commerce or which have been registered in Kentucky pursuant to the provisions of 49 CFR Part 1023.

Section 1. Proof Insurance of Interstate Exempt and Intrastate Motor Carriers. (1) Evidence of insurance required by KRS Chapter 281 shall be filed for motor carriers operating in intrastate commerce and those operating in interstate commerce but which are exempt from the authority of the Interstate Commerce Commission with the Division of Motor Carriers in the form of a certificate of insurance. The certificate of insurance shall be written to show the term of the bond or policy to be continuous until cancelled under proper notice. Another form of evidence of insurance shall not be accepted.

(2) The certificate of bodily injury and property damage insurance shall be on form TC 95-211, "Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance" revised April, 1988. This form is incorporated by reference.

(3) All motor carriers operating pursuant to KRS 281.655(7) shall file proof of cargo insurance on form TC 95-212, "Uniform Motor Carrier Cargo Certificate of Insurance" revised April, 1988. This form is incorporated by reference.

(4)(a) Cancellation of insurance required to be filed pursuant to KRS Chapter 281 shall be effected through the filing of form TC 95-213, "Uniform Notice of Cancellation of Motor Carrier Insurance Policies" revised April, 1988. This form is incorporated by reference.

(b) Notice of the reinstatement of insurance which was cancelled pursuant to subparagraph (a) of this subsection shall be as set forth in subsections (2) and (3) of this section.

Section 2. Insurance - Interstate Authorized Carriers. (1) Provisions of Title 49, Code of Federal Regulations, Part 387 as effective October 1, 1992 and 49 CFR Part 1043.2, shall govern the minimum amounts of liability insurance of a motor carrier of property or passengers authorized to do so by the Interstate Commerce Commission.

(2) In accordance with 49 CFR Part 1023, Interstate Commerce Commission authorized motor carriers registered in Kentucky pursuant to 601 KAR 1:040, Section 5 shall file proof of insurance with the Division of Motor Carriers on Form B.M.C. 91, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982, or if more than one (1) insurance carrier is involved,

Form B.M.C. 91X, "Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance" revised by the Interstate Commerce Commission in January, 1982. These forms are incorporated by reference.

Section 3. Reinstatement of Insurance. A motor carrier desiring to file a reinstatement of insurance which has been cancelled shall file a new certificate of insurance as required by this administrative regulation.

Section 4. Self-insurers. (1) Persons applying in accordance with KRS 281.655(9) for an exemption in whole or in part, from the requirements of KRS 281.655(1), (5) and (6) shall file their application in petition form accompanied by a balance sheet and an income statement, as exhibits, which shall be prepared by a Certified Public Accountant or a responsible accounting officer of the applicant and shall reflect the actual financial condition of the applicant as of the last calendar quarter preceding the date of the application.

(2) When an authorized carrier operating exclusively in interstate commerce has qualified as a self-insurer with the Interstate Commerce Commission, and that commission has entered an order allowing the carrier to qualify as a self-insurer, the applicant may file, as an exhibit, a certified copy of the ICC order with its application in lieu of a balance sheet and an income statement.

(3) The cabinet may, in its discretion, enter an order consistent with its opinion of the applicant's financial condition.

(4) The order may be revoked by the cabinet at any time when it has reason to believe that the financial condition of the applicant has changed.

(5) The cabinet may also require the filing of additional financial statements or other information at any time it desires.

Section 5. Material Incorporated by Reference. All of the material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Department of Vehicle Regulation, Division of Motor Carriers, Third Floor of the State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. Its telephone number is (502)564-4540.

Section 6. Repeal. 601 KAR 1:100, Insurance, is hereby repealed.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
STEPHEN REEDER, Deputy Secretary
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 22, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
601 KAR 2:010E

This emergency administrative regulation allows Kentucky to comply with PL 102-240, Section 4005 of Title IV and the implementing federal regulations 49 CFR Part 1023. The new federal requirement is that a motor carrier company authorized to operate by the Interstate Commerce Commission (ICC) only be required to register in its base state. The ICC regulations were effective September 1, 1993. In late August, 1993, a national group completed the "Procedures Manual for the Implementation of the Single State Registration System." An emergency exists because Kentucky intends to participate in the Single State Registration System and, since all motor carriers are required to be registered by December 31, 1993, implementation must take place immediately. There was not sufficient time after the national procedures were developed to prepare Kentucky's procedures, promulgate the administrative regulations in the ordinary manner and have the regulations in effect in time to register all of the motor carrier companies based in Kentucky by December 31. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on October 15, 1993.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Office of General Counsel

601 KAR 2:010E. General procedures.

RELATES TO: KRS Chapters 186, 281, 49 CFR Part 1023
STATUTORY AUTHORITY: KRS 186.050, 281.600, 365.015, 40 CFR Part 1023
EFFECTIVE: October 22, 1993
NECESSITY AND FUNCTION: This administrative regulation sets forth general procedures of the Department of Vehicle Regulation that are not specifically covered by topics in other administrative regulations. This administrative regulation is to provide for a more orderly operation of the department.

Section 1. No Sale or Transfer until Operation Begins. An application for sale, lease or transfer of a certificate shall not be considered by the department unless the holder of the certificate has actually started operation under the certificate except that the commissioner may consider [~~such~~] an application if, in his opinion, it would be to the best interest of the traveling or shipping public.

Section 2. Method of Payment; Exception. (1) Except as set forth in subsection (2) of this section, the department shall accept personal checks, corporate checks, certified checks, cashier's checks, money orders or cash for payment of fees and[~~/or~~] taxes owed to the Commonwealth that are the responsibility of the department to collect.

(2) [~~; except, however,~~] The payment of apportioned registration licensing fees, fees collected pursuant to 49 CFR part 1023, and payment to replace a check for which there was insufficient funds shall be made only by certified checks, cashier's checks, money orders, [~~or~~] cash, or other guaranteed funds.

Section 3. Citations. All citations issued by the Department of Vehicle Regulation shall be governed by 601 KAR 1:095 pertaining to the procedure on complaints, except that the citation shall constitute the thirty (30) day notice required in 601 KAR 1:030 to be given by the department.

Section 4. Trade Name. Where any person operating a motor carrier is the sole owner of the business and is doing business under a trade name, a declaration of assumed name shall be filed with the county clerk of the county in which the main office of the business is located, and a copy of the declaration of assumed name shall be also filed with the department.

Section 5. Declaration of Partnership. Where two (2) or more persons are operating a motor carrier as a partnership, a declaration of partnership shall be filed with the county clerk of the county in which the main office of the business is located, and a copy of the declaration of partnership shall also be filed with the department.

Section 6. Custodian of Records. The Commissioner of the Department of Vehicle Regulation is the custodian of the records of the department. However, the commissioner may designate the deputy commissioner, appropriate division director or other qualified and legally appropriate person to certify as to the authenticity of a particular record or to act on behalf of the commissioner in any other matter pertaining to records maintained by the department. Any

person who desires to obtain a copy of any record of the cabinet shall make a request therefor to the proper custodian, and a fee of ten (10) cents per page shall be charged for each copy furnished unless a fee for the record has been established by another administrative regulation.

Section 7. Financial Statements. (1) Financial statements required to be filed with applications shall be completed on the form TC 93-24, Financial Statement of Applicant or Transferee, revised November 1991. This form is hereby incorporated by reference as a part of this administrative regulation. It shall be prepared so as to reflect the financial condition as of the end of the last calendar quarter preceding the date of the filing of the application. The financial statement shall make no provision for, nor assign any value to, certificates or permits whether interstate, or intrastate held by the applicant.

(2) All financial statements filed with the applications shall be notarized or attested by the applicant, or, if the applicant is a corporation, a responsible official of same.

(3) Financial statements filed with applications for the sale, transfer or assignment of the controlling stock of a corporation or such a portion of the stock of a corporation as will vest the controlling stock of the corporation in another shall be the financial statements of the corporation the stock of which is being transferred.

(4) If the applicant has an independent financial statement, it may record on form TC 93-24 that the financial statement is attached. However, the applicant official shall swear on the form that the information is correct. Without this affidavit the financial statement shall be deemed incomplete.

(5) The form TC 93-24 may be obtained free of charge, viewed or copied from the Transportation Cabinet's Office of General Counsel, [~~located on the tenth floor of the~~] State Office Building, 501 High Street, Frankfort, Kentucky 40622. Their hours of operation are 8 a.m. until 4:30 p.m., local prevailing time on days state government is working. The telephone number is (502) 564-2548 [~~7650~~].

Section 8. Change of Name. Any authorized carrier may effect a change in the trade, assumed or corporate name under which it conducts its business by making written application therefor to the department and by furnishing evidence to the department of compliance with the applicable Kentucky laws regarding the use of trade or assumed names. The twenty-five (25) dollars application fee shall also be submitted.

Section 9. Papers to be Carried on Common Carrier Vehicles and Available for Inspection. (1) Every vehicle being operated as a common carrier of property in intrastate or interstate commerce shall carry in the possession of the driver thereof, a manifest, bills of lading, freight bills, or other similar papers, covering the intrastate or interstate freight carried by that vehicle. The manifest, bills of lading, freight bills, or other shipping documents may be of any form within the carrier's discretion, but shall clearly show the following:

(a) The name of the carrier;

(b) The name of the shipper;

(c) The name of the consignee; and

(d) The address of each.

(2) The manifest, bills of lading, freight bills or other such shipping documents shall be made available for inspection to any authorized officer upon demand.

Section 10. Prohibited Operations. It shall be illegal for any carrier to transport either persons or property, for hire, to or from a location in Kentucky which is:

(1) Known to the carrier or its employees engaged in the pick up or delivery as a place where unlawful gambling or other illegal activity is conducted; or

(2) Notoriously known as a place where unlawful gambling or other illegal activity is conducted or carried on.

Section 11. Penalties. Violation of this administrative regulation by a motor carrier [~~the carriers~~] or its employees shall be grounds for denial of reciprocal privileges, revocation of authority or denial of an application for renewal of operating authority.

STEPHEN REEDER, Deputy Secretary
NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: October 5, 1993
FILED WITH LRC: October 22, 1993 at 9 a.m.

STATEMENT OF EMERGENCY
601 KAR 9:040E

This emergency administrative regulation allows Kentucky to comply with PL 102-240, Section 4005 of Title IV and the implementing federal regulations 49 CFR Part 1023. The new federal requirement is that a motor carrier company authorized to operate by the Interstate Commerce Commission (ICC) only be required to register in its base state. The ICC regulations were effective September 1, 1993. In late August, 1993, a national group completed the "Procedures Manual for the Implementation of the Single State Registration System." An emergency exists because Kentucky intends to participate in the Single State Registration System and, since all motor carriers are required to be registered by December 31, 1993, implementation must take place immediately. There was not sufficient time after the national procedures were developed to prepare Kentucky's procedures, promulgate the administrative regulations in the ordinary manner and have the regulations in effect in time to register all of the motor carrier companies based in Kentucky by December 31. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which was filed with the Regulations Compiler on October 15, 1993.

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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 9:040E. Reciprocity and motor vehicle identification cards.

RELATES TO: KRS Chapters 138, 186, 281
STATUTORY AUTHORITY: KRS 281.600, 281.610, 281.750, 281.752
EFFECTIVE: October 22, 1993
NECESSITY AND FUNCTION: KRS Chapters 138, 186 and 281 require the Transportation Cabinet to administer and enforce motor vehicle laws and the highway use tax laws and to regulate the transportation of persons and property for hire. This administrative regulation establishes the identifying documents required, and the fees therefor, necessary to enforce and administer the requirements of these laws.

Section 1. In General. (1) Before a motor carrier is entitled to reciprocity whereby the operation of its motor vehicles engaged exclusively in interstate commerce is exempted from payment of registration fees as required by KRS 186.050, or seat taxes as required by KRS 186.276-186.286, there shall be a reciprocity agreement between the Commonwealth of Kentucky and the state in which the motor carrier's equipment should be and is properly licensed.

(2) In determining if [~~whether~~] a motor vehicle is entitled to reciprocity, the law of Kentucky dealing with reciprocity, administrative

regulations of the cabinet, and the reciprocity agreements between the states involved shall be the determining factors.

Section 2. Identification Cards for Vehicles Operating Under Reciprocity Agreements. (1) Before any motor vehicle operated under a reciprocity agreement and operated by a motor carrier as described in KRS 138.655(5) and (7) and KRS 281.011(3), (4) and (5) shall be entitled to reciprocal privileges when operating in interstate commerce in Kentucky and entitled to use the highways of this state, the owners and operators shall apply to the Transportation Cabinet for a motor vehicle identification card. [~~Such application shall be made on forms prescribed and furnished by the cabinet and~~]

(2) The application shall be on form TC 95-38, "Application for Kentucky Vehicle Identification Card for Year " last revised in September, 1993. This form is hereby incorporated by reference.

(3) Except as provided in Section 9 of this administrative regulation, the application shall be accompanied by a fee of ten (10) dollars for each motor vehicle identification card applied for.

(4) This [~~Such~~] card shall be carried in the cab of the motor vehicle at all times. Failure to display this card shall constitute a violation of KRS 138.665, 281.750 or 281.752.

Section 3. Motor Vehicle Identification Cards for Vehicles Licensed in Kentucky. (1) Before any motor vehicle registered and licensed in Kentucky and operated by a motor carrier as described in KRS 138.655(5) and (7) and KRS 281.011(3), (4) and (5) can be operated in intrastate commerce or interstate commerce, the [~~such~~] vehicle shall [~~must~~] have a vehicle identification card issued by the Transportation Cabinet after application by the owner or operator on form TC 95-38.

(b) This [~~, which~~] card shall [~~must~~] be carried in the cab of the vehicle at all times. [~~The owner or operator of such vehicle shall apply to the Transportation Cabinet for the motor vehicle identification card. The application shall be on forms prescribed and furnished by the cabinet.~~]

(c) A [~~No~~] fee shall not be charged by the cabinet for the issuance of this card.

(d) Failure to display this card shall constitute a violation of KRS 138.665, 281.750 or 281.752.

Section 4. Information to be Set Out on the Motor Vehicle Identification Cards. Motor vehicle identification cards shall be issued annually upon payment of the prescribed fee and upon compliance with all statutory requirements and appropriate administrative regulations. The card shall contain the following:

(1) A designation of "private carrier" or "for hire carrier";

(2) The name and address of the holder;

(3) The identification of the vehicle;

(4) The vehicle combined license weight or the actual combined weight of the vehicle and any towed unit when operated on the public highways of the state during the current registration year; [~~such other information as may be required;~~] and

(5) [~~in addition, shall have thereon~~] The KYU license number issued to the owner or operator by the Transportation Cabinet under KRS 138.655 for the use of gasoline and special fuels on the public highways of this state.

Section 5. Temporary Identification Documents. (1)(a) Notwithstanding the provisions of Sections 2 and 3 of this administrative regulation, any operator of a motor vehicle qualified to operate intrastate or interstate in Kentucky and using either a leased or owned vehicle may elect to obtain a thirty (30) day emergency permit issued by the cabinet.

(b) The permits shall be issued for a fee of ten (10) dollars each.

(c) The permit shall [~~, which must~~] be displayed in the cab of the vehicle, as identification for the [~~such~~] vehicle.

(d) The motor carrier to whom a thirty (30) day emergency permit is issued shall be [~~is~~] responsible for the proper use of the [~~such~~] permit by the lessor.

(e) The motor carrier shall write in ink on each thirty (30) day emergency permit issued to it the date of execution.

(f) The thirty (30) day emergency permit shall be removed from the vehicle and destroyed at the expiration of the lease or thirty (30) days, whichever is shorter.

(g) Any vehicle operating with a thirty (30) day emergency permit which has not been dated as required herein shall be deemed to be operating without identification and the motor carrier shall be subject to the penalties provided by law.

(2)(a) Effective February 1, 1987, notwithstanding the provisions of Sections 2 and 3 of this administrative regulation, any operator of a vehicle qualified to operate intrastate or interstate in Kentucky may elect to obtain a temporary authority permit in lieu of an annual vehicle identification card.

(b) The temporary permit shall be issued for a period not to exceed ten (10) days.

(c) Temporary permits may be issued in person, by mail or transmitted collect on delivery via designated wire or transmittal company.

(d) The fee for this permit is ten (10) dollars plus any applicable transmittal charges when transmitted collect on delivery via designated wire or transmittal company to a requested location.

(e) The permit shall contain the same information as set forth on the annual vehicle identification card.

(f) The permit shall [~~and must~~] be displayed in the cab of the vehicle while it is operating in Kentucky.

(3) [~~Any operator of a motor vehicle subject to the supplemental highway use tax imposed by KRS 138.660(4) may elect to purchase a ten (10) day supplemental highway use (SHU) tax permit in lieu of obtaining an annual supplemental highway use tax decal. The charge for the SHU tax permit is fifty (50) dollars. Such permit may be transmitted collect on delivery via designated wire or transmittal company to a requested location. This temporary tax permit may be purchased in person or by mail, provided all other pertinent requirements have been met. The tax permit must be displayed in the cab of the vehicle at all times while operating in Kentucky.~~

~~(4)~~] For the purpose of convenience for permit applicants and of the cabinet, [~~any and~~] all permits requested by an applicant may be combined and transmitted in one (1) document.

Section 6. Itinerant Truckers. Motor vehicles used by itinerant truckers, salesmen, solicitors and peddlers to transport merchandise to be sold and disposed of in Kentucky, while upon or from a public highway or street, shall not be entitled to reciprocal privileges while in Kentucky except where contrary provisions are made by the reciprocity agreements in effect between Kentucky and the state where the vehicle is licensed.

Section 7. Violations of Kentucky Law. Any motor vehicle operating into or through Kentucky within the discretion of the cabinet, shall be denied reciprocal privileges in Kentucky in addition to the other penalties provided by the Kentucky revised statutes if the vehicle is being operated:

(1) In excess of the maximum weight or size limit allowed by the provisions of KRS 189.221 and 189.222, or in excess of the maximum weight or size limits allowed by overweight or oversize permits issued pursuant to the provisions of KRS 189.221 through 189.274;

(2) While [~~any motor vehicle operating into or through Kentucky and~~] failing to display the motor vehicle identification card to display the motor vehicle identification card required by Sections 2, 3, 4 and 5 of this regulation; or

(3) [~~any vehicle operating in Kentucky~~] In intrastate commerce without a nonreciprocal trip permit unless apportioned registered in Kentucky under the provisions of the Interstate Registration Plan[~~, may, within the discretion of the cabinet, be denied reciprocal~~

~~privileges in Kentucky in addition to the other penalties provided by the Kentucky Revised Statutes~~].

Section 8. Nonreciprocal Trip Permits. (1) A nonreciprocal trip permit issued in accordance to KRS 281.838 shall [~~must~~] be obtained in advance of operations in this state.

(2) The application for the [~~such~~] permit shall [~~must~~] at a minimum briefly describe the vehicle and include the name of the operator.

Section 9. Proof of Fee Payment. (1) In conjunction with payment of the fees set forth in KRS 281.752, if a for-hire motor carrier is operating in interstate or foreign commerce under a certificate or permit issued by the Interstate Commerce Commission and has been issued a registration receipt applicable to operations in Kentucky pursuant to 49 CFR Part 1023, a fee shall not be required for the motor vehicle identification card required in Section 2 of this administrative regulation.

(2) In order to provide proof that Kentucky's portion of the fees collected by another jurisdiction pursuant to 49 CFR Part 1023 have been paid the representative of the Interstate Commerce Commission authorized for-hire motor carrier shall certify this payment on form TC 95-38.

Section 10. Material Incorporated by Reference. The forms incorporated by reference as part of this section may be copied, viewed or obtained from the Division of Motor Carriers. The Division of Motor Carriers is on the Third Floor of the State Office Building in Frankfort, Kentucky. Its mailing address is P.O. Box 2007, Frankfort, Kentucky 40602. The telephone number is (502)564-4540. Its business hours are 8 a.m. to 4:30 p.m. local prevailing time on all weekdays except state holidays.

STEPHEN REEDER, Deputy Secretary
NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: October 5, 1993
FILED WITH LRC: October 22, 1993 at 9 a.m.

ADMINISTRATIVE REGULATIONS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

OFFICE OF THE GOVERNOR
Executive Branch Ethics Commission
(As Amended)

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**, or** [;

~~(d)~~] personal service contract.

(3)**(a) The signature on the "Initial Registration Statement" shall be an original signature in blue ink.** [~~The "Initial Registration Statement" shall be signed in ink of any color except black.~~]

(b) [~~(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 **161** [~~71 D~~], [~~State~~] Capitol **Annex**, 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.

PERSONNEL BOARD
(As Amended)

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**. "Class series" means a group of positions that are similar as to the duties performed and have:**

(1) Varying levels of:

(a) Discretion;

(b) Responsibility;

(c) Minimum requirements of training, experience, or skill; and

(2) Schedules of compensation that are commensurate with minimum requirements.

Section 2. [~~:~~] Work Station. (1) The official work station of employees assigned to an office **shall be** [~~is~~] the street address where the office is located.

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

Section **3.** [~~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 **4.** [~~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 5. ~~[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.

DEPARTMENT OF PERSONNEL
(As Amended)

101 KAR 2:100. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.1976, 344.030, PL 103-3

STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 18A.030, 18A.110, 18A.155, 344.030, PL 103-3

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern annual leave, sick leave, special leaves of absence, and for other conditions of leave. The Family and Medical Leave Act of 1993 (PL 103-3) as implemented by 29 CFR Part 825 requires the granting of family leave. This regulation is necessary to comply with these statutory requirements.

Section 1. Annual Leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, and each part-time employee who works at least 100 hours a month 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

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. 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 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar 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 subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) 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.

(4) Accumulated annual 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.

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

(6) 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.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his accumulated annual leave in the receiving agency.

(8) 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 unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A 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 such benefits.

(d) Any employee who leaves state government 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 contribution for life insurance and health benefits in the following month.

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in paragraph (2) of this section, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated leave. 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 in the receiving agency. The effective date of the separation shall be the last workday.

(11) 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 Section 2(2) of this regulation.

(12) 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.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except emergency, per diem and part-time employees who work less than 100 hours a month, 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 upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) 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. 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. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. 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 18A.140, 18A.145, or 18A.990.

(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) An appointing authority shall grant or require the use of 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/her 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 contagious disease;

(e) Has lost by death 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) An 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. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform the essential functions of his[~~/her~~] duties with or without reasonable accommodation. 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. The employee shall inform the employer that reasonable accommodation is necessary and shall provide upon request supporting documentation from a certified professional. [~~It shall be the responsibility of the employee to advise the appointing authority of accommodations that may be necessary and to provide supporting medical evidence.~~] [~~; if there is no such position available, the regulations pertaining to layoff apply.~~] 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 only if the appointing authority has been unable to place the employee in a vacant, budgeted position, with the same agency, for which the employee qualifies. The employee shall be given priority consideration for such vacant position, if he is capable of performing its essential functions with or without reasonable accommodation. 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 provisions of KRS Chapter 18A 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 in 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 such benefits.

(d) Any employee who leaves state government 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 contribution for life insurance and health benefits in the following month.

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

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

(11) Employees shall be credited for accumulated sick leave when separated by proper resignation, layoff, retirement, or when granted leave without pay. Former employees who are reinstated or reemployed shall have unused sick leave balances revived upon appointment 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) An 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. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An 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 3. Family Leave. (1) Effective August 5, 1993, every employee in state service who has completed twelve (12) months of service and has worked or been on paid leave at least 1,250 hours during the preceding twelve (12) months shall qualify for twelve (12) weeks of family 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 leave without pay. Unused family leave shall not be carried over from year to year.

(2)(a) A week of family 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 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 leave), the hours worked under the new schedule shall be used for calculating the employee's normal work week.

(3) An appointing authority shall grant family leave, upon the receipt of a completed application from an employee. The appointing authority shall require the employee to utilize accumulated sick, annual and compensatory leave prior to granting unpaid family leave, provided that the employee may request to reserve ten (10) days of paid sick leave. The amount of available family leave shall be reduced by the amount of paid leave used. A completed application means the request form and the medical certification required by subsection (4) of this section. The employee shall make the application as far in advance of the start of the leave as reasonable. Family 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 under an agreement with an agency of the Commonwealth or other state government. An appointing authority may require a couple in the employ of an agency to limit the total amount of family leave to twelve (12) weeks where leave is sought in connection with the birth, adoption or placement of a child;

(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, child (including biological, adopted, step, or foster), or other family member of similarly close blood or legal relationship (who has resided with the employee for not less than thirty (30) days prior to application), if the spouse, child, parent or family member has a serious health condition. A child includes one who is over eighteen (18) years of age and who is incapable of self-care because of a mental or physical disability. A serious health condition is a condition which requires inpatient care or continuing treatment by a health provider which renders the employee incapable of performing the duties of the employee's position. Where inpatient care is not involved, the expected absence from work, or from school, or incapacity in performing other daily activities of a family member shall be for a period of more than three (3) days.

(d) An appointing authority shall grant family leave because of a serious health condition, of the employee, that makes the employee temporarily unable to perform the essential functions of his position.

(4)(a) The appointing authority shall require an employee granted family leave for a serious health condition to supply a certification, on a form prescribed by the commissioner, from a health care provider that includes a statement that the employee is needed to care for a family member, or, that the employee's presence would be beneficial to the family member. An employee requesting intermittent leave or leave on a reduced leave schedule due to serious health condition of the employee or family member 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. A "health care provider" includes: doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, and nurse midwife, or certified Christian Science practitioner.

(b) If an employee submits a complete certification signed by the health care provider, the appointing authority shall not request additional information from the employee's health care provider. 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.

(c) If the opinions of the employee's health provider 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. An appointing authority may require recertification of the need for family leave every thirty (30) working days.

(5) If an employee requests intermittent leave or a reduced work schedule to care for a seriously ill family member 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.

(6) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave or shall have been on family leave during the previous month subject to the following conditions:

(a) Any combination of work days and paid leave and family 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) When an employee is unable to work, and elects to use family leave as the sole qualification for the state contributions for life insurance and health benefits, he shall utilize his family leave days consecutively.

(d) An employee who has exhausted paid leave and family 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.

(e) An employee who uses family 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 leave is exhausted, shall reimburse the Commonwealth for state contributions paid on behalf of the employee. The employee shall not be required to reimburse the Commonwealth 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 leave under this regulation.

2. Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control are where a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; or the employee is laid off while on leave. Examples of other 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.

(f) An employee, on family 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.

(7) At the conclusion of the family leave, an employee shall be restored to the same job that the employee held before going on leave. The employee shall be returned to the same shift or equivalent schedule. If special qualifications are required for a position and said qualifications have lapsed during the employee's leave, the employee may be reassigned to different duties and given a reasonable opportunity to fulfill the requirements after returning to work.

~~[Section 4. 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 similarly close blood or legal 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 completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.~~

~~(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.~~

~~(3) 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.~~

~~(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.~~

~~(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.~~

~~(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.~~

~~(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.~~

~~(8) 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.~~

~~(9) 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.~~

~~(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.]~~

Section 4. ~~[5.]~~ ~~[3.]~~ 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 5. ~~[6.]~~ ~~[4.]~~ Compensatory Leave. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of the Fair Labor Standards Act. An employee who is authorized 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 Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) 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 regular rate of pay for the final three (3) years of employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off when practicable. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 6. ~~[7.]~~ ~~[5.]~~ Military Leave. 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 any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An 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 7. ~~[8.]~~ ~~[6.]~~ 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. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 8. ~~[9.]~~ ~~[7.]~~ Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave

without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, 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.

(3) An appointing authority, with approval of the commissioner, 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 in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. 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 such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel 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 18A 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 such benefits.

(d) Any employee who leaves state government 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 contribution for life insurance and health benefits in the following month.

Section **9.** ~~[10.]~~ ~~[8.]~~ Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/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.

LOWELL W. CLARK, Commissioner
APPROVED BY AGENCY: October 14, 1993
FILED WITH LRC: October 14, 1993 at 9 a.m.

DEPARTMENT OF PERSONNEL
(As Amended)

101 KAR 3:010. Leave regulations for unclassified service.

RELATES TO: KRS 18A.155
STATUTORY AUTHORITY: KRS ~~[Chapter 13A,]~~ 18A.155, 18A.197

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for the unclassified service persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. In practice, the leave regulations (101 KAR 2:100) which apply to merit system employees in the following specific areas have also been applied to the aforementioned categories of employees in the unclassified service.

Section 1. Annual leave. (1) Each full-time employee in the state service, except seasonal, temporary, per diem, and emergency employees, or each part-time employee who works at least 100 hours a month 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

A full-time employee must have worked more than half of the workdays in a month to qualify for annual leave. Each employee shall be credited with additional leave upon the first day of the month following the month in which the leave is earned. In computing months of total service for the purpose of earning annual leave, only those months for which an employee earned annual leave shall be counted or in the case of a part-time employee, only those months in which the employee worked at least 100 hours shall be counted. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing years of total service. 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 18A.140, 18A.145, or 18A.990. In those cases where an employee is changed from full time to part time, those months for which the employee earned annual leave as a full-time employee shall be counted in computing months of total service. Employees serving on a part-time basis who work less than 100 hours a month shall not be entitled to annual leave.

(2) Annual leave may be accumulated and carried forward from one (1) calendar year to the next not to exceed the following maximum amounts:

Months of Service	Maximum Amount
0-59 months	Thirty (30) workdays
60-119 months	Thirty-seven (37) workdays
120-179 months	Forty-five (45) workdays
180-239 months	Fifty-two (52) workdays
240 months and over	Sixty (60) workdays

However, leave in excess of the above maximum amounts shall be converted to sick leave at the end of the calendar 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 subsection (1) of this section. Annual leave shall not be granted in excess of that earned prior to the starting date of leave.

(3) Absence due to sickness, injury, or disability in excess of that authorized for such purposes may, at the request of the employee and within the discretion of the appointing authority, be charged against annual leave.

(4) Accumulated annual 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.

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

(6) 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.

(7) An employee who is transferred or otherwise changed from the jurisdiction of one (1) agency to another shall retain his accumulated annual leave in the receiving agency.

(8) 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 unless he has requested to retain up to ten (10) days of accumulated annual leave.

(9) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a 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 such benefits.

(d) Any employee who leaves state government 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 contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

(10) Employees shall be paid in a lump sum for accumulated annual leave, not to exceed the maximum amounts as set forth in Section 1(2) of this regulation, when separated by proper resignation or retirement. In the case of layoff, the employee shall be paid in a lump sum for all accumulated annual leave. 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 in the receiving agency. The effective date of the separation shall be the last workday.

(11) 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 Section 1(2) of this regulation.

(12) 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.

(13) Absence for a fraction or part of a day that is charged to annual leave shall be charged in hours or increments of one-quarter (1/4) hours.

Section 2. Sick Leave. (1) Each employee in the state service, except an emergency, per diem and part-time employees who work less than 100 hours a month, 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 upon the first day of the month following the month in which the sick leave is earned. Employees serving on a part-time basis who work at least 100 hours a month shall accumulate sick leave with pay at the rate of one (1) working day for each month of service. Each employee shall be credited with additional sick leave upon the first day of the month following the month in which the sick leave is earned.

(2) 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. 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. In those cases where an employee is changed from part time to full time, those months in which the employee worked at least 100 hours as a part-time employee shall be counted in computing months of total service. Part-time employees who work at least 100 hours a month completing 120 months of total service with the state shall be credited with ten (10) additional sick leave days upon the first day of the month following the completion of 120 months of service. In computing months of total service for part-time employees who work at least 100 hours a month for the purpose of crediting ten (10) additional sick leave days, only those months in which the employee worked at least 100 hours shall be used. In those cases where an employee is changed from full time to part time, those months for which the employee earned sick leave as a full-time employee shall be counted in computing years of total service. The total service must be verified before the leave is credited to the employee's record. 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 18A.140, 18A.145, or 18A.990.

(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) An appointing authority shall grant accrued sick leave with pay when the 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/her 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;

(d) Would jeopardize the health of others at his duty post, because of exposure to a contagious disease;

(e) Has lost by death 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 may return the employee to his former position. At the termination of sick leave with pay exceeding six (6) months, the appointing authority may return the employee to a position for which he is qualified and which resembles his former

position as closely as circumstances permit.

(7) An 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. The appointing authority may require periodic doctor's statements during the year attesting to the continued inability to perform his/her duties. When the employee has given notice of his ability to resume his duties, the appointing authority may return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. 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. 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 provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a 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 such benefits.

(d) Any employee who leaves state government 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 contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

(9) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in hours or increments of one-quarter (1/4) hours.

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

(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 appointment 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) An 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. An appointing authority shall grant sick leave when the application is supported by acceptable evidence.

(b) An 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 3. Family Leave. It shall be the responsibility of the appointing authority to administer family leave in compliance with the Federal Family and Medical Leave Act of 1993 and regulations promulgated thereunder found in 29 CFR Part 825. Each employee in a nonexempt, nonpolicy making position shall be entitled to family leave as set out in 101 KAR 2:100, Section 3.

[~~Section 4. 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 similarly close blood or legal 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 completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.~~

~~(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.~~

~~(3) 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.~~

~~(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.~~

~~(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.~~

~~(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.~~

~~(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.~~

~~(8) 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.~~

~~(9) 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.~~

~~(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.~~]

Section 5. [~~6.~~] [~~3.~~] 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 5. [~~6.~~] [~~4.~~] Compensatory Leave and Overtime. (1) It shall be the responsibility of the appointing authorities to administer the overtime and compensatory leave provisions of this section and the Fair Labor Standards Act. An employee who is authorized 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 Kentucky Labor Laws. Compensatory leave may be accumulated or taken off in one-quarter (1/4) hour increments. The maximum amount of compensatory leave that may be accumulated shall be 200 hours.

(2) An employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

(3) 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 regular rate of pay for the final three (3) years employment.

(4) An employee who has accrued compensatory leave shall be permitted by the appointing authority or his designee to take such time off if the use of such time does not unduly disrupt the operations of the agency. To maintain a manageable level of accumulated compensatory time and for the specific purpose of reducing an employee's compensatory leave, an appointing authority or his designee may direct an employee to take accumulated compensatory time off from work. Notice must be in writing specifying the number of hours to be taken.

(5) An employee deemed to be "nonexempt" shall be paid at one and one-half (1 1/2) times his regular hourly rate of pay for all hours worked in excess of forty (40) per week.

(6) An employee except one who is in policy making position, may, after accumulating 151 hours of compensatory leave, request that he be paid for fifty (50) hours at his regular rate of pay. An employee's leave balance shall be reduced accordingly.

(7)(a) All employees, except those who are in policy making positions, shall be paid for fifty (50) hours at their regular hourly rate of pay upon accumulating 200 hours of compensatory leave. The employee's leave balance shall be reduced accordingly.

(b) An employee in a policy making position shall be paid for all accrued compensatory leave, not to exceed 200 hours, only upon termination from the unclassified service. An employee who reverts to a position in the classified service or an employee who resigns one day and is employed the next day shall retain his accrued compensatory leave in the receiving agency.

(8) All employees whose prescribed hours of duty are normally less than forty (40) per week and who have not exceeded the maximum amount of compensatory time shall receive compensatory leave on an hour-for-hour basis until the total hours worked in that week reaches forty (40).

(9) Compensatory leave used during the same workweek it is earned does not constitute "hours worked" for computing paid overtime.

Section 6. [~~7.~~] [~~5.~~] Military Leave. 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 any such absence shall not be charged to leave. Absence in excess of this amount will be charged as annual leave, compensatory leave or leave without pay. The appointing authority may require a copy of the orders requiring the attendance of an employee before granting military leave. An 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 7. [~~8.~~] [~~6.~~] 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. Such absence shall not be charged against leave. Employees who are not scheduled to work during voting hours shall not receive voting leave and shall not be entitled to compensatory leave in lieu of time off to vote. Employees who are permitted to work in lieu of voting leave shall be granted compensatory leave on an hour-for-hour basis.

Section 8. [~~9.~~] [~~7.~~] Special Leave of Absence. (1) In addition to leaves as above provided, an appointing authority may grant leave without pay for a period or periods not to exceed thirty (30) working days in any calendar year.

(2) An appointing authority, with approval of the commissioner, 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, or for other purposes that are deemed to be in the best interests of the state service.

(3) An appointing authority, with approval of the commissioner, 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 in the best interest of the state.

(4) An appointing authority, with approval of the commissioner, may place an employee on leave without pay for a period not to exceed thirty (30) working days pending an investigation into allegations of employee misconduct. 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 such investigation reveals no misconduct on behalf of the employee, he shall be made whole for the period of such leave and all records relating to the investigation will be purged from agency and Department of Personnel files. The appointing authority shall notify the employee in writing of the completion of the investigation and the action taken.

(5) Employees eligible for state contributions for life insurance and health benefits under the provisions of KRS Chapter 18A shall have worked or been on paid leave for more than half of the workdays in a 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 such benefits.

(d) Any employee who leaves state government 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 contribution for life insurance and health benefits in the following month. [~~except:~~

~~(a) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to a work related injury covered by workers compensation.~~

~~(b) When the employee is unable to work or take paid leave for more than half of the workdays in a month due to his or immediate family member's prolonged illness or disability verified by a medical certificate signed by a licensed physician and certifying to the prolonged incapacity or illness.~~]

Section 9. [~~10.~~] [~~8.~~] Absence Without Leave. An employee who is absent from duty without approval shall report the reason therefor to his supervisor immediately. Unauthorized and/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.

LOWELL W. CLARK, Commissioner
BRERETON C. JONES, Governor
APPROVED BY AGENCY: August 3, 1993
FILED WITH LRC: August 3, 1993 at 2 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended)

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.

(4) [~~(5)~~] "Licensee" means a dentist or dental hygienist licensed by this board.

(5) "Dental health care worker" or "DHCW" means a licensee, or an unlicensed person under the direction, control, supervision, or employment of a licensee, including students and trainees under the direction, control, supervision, or employment of a licensee, whose activities involve contact with:

(a) Patients or teeth;

(b) Blood or other body fluids from patients in a dental health care setting or laboratory; or

(c) Instruments, equipment, appliances or intra-oral devices that have been used in the mouth or which have come in contact with body fluids, teeth or saliva.

[~~(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.~~]

(6) [~~(7)~~] "Invasive procedure" means entry into mouth, body tissues, cavities or organs.

(7) [~~(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.

GENERAL GOVERNMENT CABINET
Board of Veterinary Examiners
(As Amended)

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 fraud, deceit, or misrepresentation in the:**
(1) Procurement of a license to practice veterinary medicine; or
(2) The practice of veterinary medicine. [~~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 **18.** [~~19.~~] A veterinarian shall comply with a request by the board to appear before the board or to provide information to the board.

Section **19.** [~~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 **20.** [~~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 **21.** [~~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 22. [~~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 23. [~~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 24. [~~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 25. [~~26.~~] A veterinarian shall not physically abuse or engage in unnecessary rough handling of a patient under his care.

Section 26. [~~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 27. [~~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 28. [~~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 29. [~~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 30. [~~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 31. [~~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 **the** [~~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 32. [~~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 the [~~such~~] consent.

Section 33. [~~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 34. [~~35.~~] [~~36.~~] A veterinarian shall ascertain, before hiring, whether a **person who may be hired as a veterinarian** [~~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 35. [~~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.

FINANCE AND ADMINISTRATION CABINET
Board of Registration for Professional Engineers and Land Surveyors
(As Amended)

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 administrative 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 **which at a minimum would be to obtain the subject deed and the adjoining deeds**; 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**, the**:

(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; **and**

(h) [~~The~~] Statements in subsection (4) of this section.

(4) **The work order shall include the following statements:** (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 **which at a minimum would be to obtain the subject deed and the adjoining deeds**.

(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 boundary monumentation, or evidence used shall be shown on the drawing.** [~~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.

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

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. (1) **Except as specified in Section 5 of this administrative regulation,** 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.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 50:035. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.10-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 52, 60, 70, 72, 73, 75, 77, 78, 42 USC 7401-7671q, July 21, 1993 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

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 combines construction and operating permits into one (1) permit and provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as otherwise provided in this section, terms used in this administrative regulation shall have the meaning given to them in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o and 40 CFR Parts 72, 73, 75, 77, and 78. 40 CFR Parts 72, 73, 75, 77, and 78 are incorporated by reference in Section 11 [~~10~~] of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990).

(3) "Administrative permit amendment" means a revision to a permit that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source if the cabinet determines that no other change in the permit is necessary and if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the cabinet;

[~~(e) Allows a source to voluntarily modify or replace its air pollution control equipment to provide an equivalent or more efficient control of air pollutants, if the source is not required to modify or replace the control equipment to comply with an administrative regulation or a permit condition.~~]

(e) [~~(f)~~] Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements substantially equivalent to those prescribed in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision; or renewal of a permit subject to the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit that is subject to the acid rain program.

(7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard. [~~any of the following:~~

~~(a) A federally enforceable requirement;~~

~~(b) A state-origin requirement or standard; or~~

~~(c) A permit requirement to use all available, practical, and reasonable methods to prevent and control air pollutants, if emission standards have not been prescribed in an administrative regulation.~~]

(8) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.

(9) "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the acid rain program, means the "designated representative."

(10) "Draft permit" means the version of a permit which the cabinet offers for public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.

(11) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(12) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038.

(13) "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the acid rain program.

(14) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to the effective date of this administrative regulation, or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(15) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision.

(16) "Federally enforceable requirement" means all of the following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future-effective compliance dates:

(a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 thorough 7515 (Title I of the Act).

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7429 (Section 129 of the Act) governing solid waste incineration.

(d) A standard or other requirement [~~A national emission standard for hazardous air pollutants (NESHAP)~~] promulgated pursuant to 42 USC 7412 (Section 112 of the Act), including a requirement for accidental release prevention pursuant to 42 USC 7412(r) (Section 112(r) of the Act).

(e) Standards or requirements of the acid rain program.

(f) Requirements established pursuant to 42 USC 7661c(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification.

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661c(e) (Section 504(e) of the Act).

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act).

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act).

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that those requirements need not be contained in the permit.

(17) "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made.

(b) For a state-origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(18) "Fugitive emissions" means those emissions which do not pass through a stack, chimney, vent, or other functionally-equivalent opening.

(19) "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(20) "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

(a) A [~~major~~] stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061 or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources. [~~; or~~]

(b) A stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of an air pollutant. The fugitive emissions of a stationary source shall be considered in determining if it is a major source only if it belongs to one (1) he following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;

12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plant;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants;
21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
27. All other stationary source categories subject to an administrative regulation in 401 KAR Chapters 59 and 61 which are promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or a national emission standard for hazardous air pollutants (NESHAP) in 401 KAR Chapter 57, promulgated pursuant to 42 USC 7412 (Section 112 of the Act).

(c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) ~~[located in an area designated nonattainment pursuant to 401 KAR 51:010,]~~ including:

1. For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"
2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and
3. For particulate matter (PM_{10}) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons per year or more of PM_{10}.

(21) "Minor source" means a stationary source that is required to obtain a permit pursuant to this administrative regulation and that is not a major source.

(22) "Permit revision" means a minor permit revision, a significant permit revision, or an administrative permit amendment.

(23) "Phase II" means the acid rain program period beginning January 1, 2000, and continuing thereafter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit an air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the U.S. EPA. This term does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the acid rain program.

(25) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(26) "Regulated air pollutant" means the following:

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010;

(d) A pollutant that is subject to a standard promulgated pursuant to 42 USC 7411 and 7412 (Sections 111 and 112 of the Act);

(e) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act);

(f) ~~[(e)]~~ A pollutant listed in 401 KAR 57:061; and

(g) ~~[(f)]~~ A pollutant listed in 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(27) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 5(7) ~~[(6)]~~ of this administrative regulation.

(28) "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or
2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source[s], the designated representative.

(29) "Section 502(b)(10) changes" means changes that contravene an express permit term. These changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(30) ~~[(29)]~~ "Significant permit revision" means a permit revision required to be processed pursuant to Section 6(2)(c) of this administrative regulation.

(31) ~~[(30)]~~ "State implementation plan (SIP)" means the most recently prepared plan or revision required by 42 USC 7410 (Section 110 of the Act) which has been submitted by the cabinet and approved by the U.S. EPA.

(32) ~~[(31)]~~ "State-origin permit" means a permit that contains only state-origin permit conditions. If the permit contains one (1) or more federally enforceable permit conditions it is a federally enforceable permit.

(33) ~~[(32)]~~ "State-origin permit condition" means a provision in the permit that is not required pursuant to 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.

(34) ~~[(33)]~~ "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant.

(35) ~~[(34)]~~ "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

(1) A source shall be exempt from this administrative regulation if:

(a) The source is **a minor source and is** not subject to an applicable requirement; **or** ~~[and]~~ ~~[or]~~

(b)**1.** The source **is subject only to the requirements of 401 KAR 53:010 and** has uncontrolled emissions of less than twenty-five (25) tons per year and potential emissions of five (5) tons per year or

less of a pollutant for which an ambient air quality standard is listed in 401 KAR 53:010, or less than the significant net emissions rate pursuant to 401 KAR 51:017, whichever is less; **and** [or] [and]

2. [(c)] The source has potential emissions of [less than the exempting value provided in an administrative regulation in 401 KAR Chapter 57 or] less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 [if an exempting value is not given in 401 KAR Chapter 57]; **and**

3. The source is not subject to 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

(2) The following affected facilities [sources] and activities shall also be exempt from this administrative regulation, but they shall not be exempt from compliance with applicable standards in other administrative regulations in 401 KAR Chapters 50 through 63. The cabinet may require the owner or operator to demonstrate compliance with all applicable administrative regulations.

(a) An asbestos demolition or renovation operation [source] which is subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042 [401 KAR 58:020, Section 6].

(b) An affected facility [A source] which is subject only to the provisions of 40 CFR Part 60, Subpart AAA.

(c) [(c)] A vehicle used for the transport of passengers or freight.

(d) [(g)] An affected facility [A source] subject only to the provisions of 401 KAR 63:005.

(e) [(i)] A publicly owned road.

(f) [(m)] The installation of air pollution control equipment where none is required. The owner or operator shall notify the cabinet in writing prior to installing the equipment. [may be required to submit an application for a permit.]

(g) [(n)] Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement [administrative regulation].

(h) [(e)] An incinerator with a charging rate of less than 500 pounds per hour, unless it is subject to an administrative regulation in 401 KAR Chapters 50 through 63.

(i) [(f)] A direct-fired source used for heating and ventilating.

(j) [(h)] One (1) or more indirect heat exchangers, with a rated total heat input capacity of less than fifty (50) million BTU per hour which use natural gas or liquid petroleum gas as a main fuel and which use only distillate fuel oil as a standby fuel, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(k) [(i)] An individual addition of a natural gas or liquid petroleum gas-fired boiler having an individual rated heat input capacity of less than fifty (50) million BTU per hour, unless the unit is subject to 401 KAR 51:017, 401 KAR 51:052, or 40 CFR Part 60, Subpart Db.

(l) [(d)] An internal combustion engine, except as provided in 401 KAR 59:019.

(m) [(k)] A feed grain mill having a hammermill with a rated capacity of ten (10) tons per hour or less, if the source does not include a grain dryer.

(n) [(l)] A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to an administrative regulation in 401 KAR Chapters 59 or 61.

(3) The total emissions from the affected facilities and activities at a source, which are exempted from this administrative regulation pursuant to subsection (2)**(h)** [(e)] through (n) of this section, shall not exceed five (5) tons per year. These emissions shall not be excluded from the permit application to the extent that the emissions are necessary to determine compliance with an applicable requirement or to determine if a requirement is applicable.

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. Existing major sources.

a. One-third (1/3) of the existing major sources with the lowest score, as determined pursuant to Section 10 of this administrative regulation, shall file a complete application for a permit within twelve (12) months after the effective date of this administrative regulation. The cabinet shall notify these sources within fifteen (15) days after the effective date of this administrative regulation.

b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the date the U.S. EPA publishes a final rule approving the state permit program.

c. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(2) of this administrative regulation. [An existing major source shall file a complete application for a permit within twelve (12) months after becoming subject to this administrative regulation or within twelve (12) months after the effective date of this administrative regulation, whichever date is later.]

2. Existing minor sources. An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit. These applications shall be processed as federally enforceable permits pursuant to Section 5(2) of this administrative regulation. [after becoming subject to this administrative regulation or within fifty four (54) months after the effective date of this administrative regulation, whichever date is later.]

3. Existing sources subject to a state-origin requirement. Sources which are required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state enforceable permits pursuant to Section 5(3) of this administrative regulation, unless the source requests to have the permit processed as a federally enforceable permit. [An existing source which is required to have a state-origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to this administrative regulation or within sixty (60) months after the effective date of this administrative regulation, whichever date is later.]

4. A source constructing, reconstructing, or modifying after the effective date of this administrative regulation shall file a complete application to obtain a permit or permit revision prior to commencing construction, reconstruction, or modification, except as provided in Section 6 of this administrative regulation.

a. The applications for sources that are required by the U.S. EPA to obtain federally enforceable permits shall be processed by the cabinet pursuant to Section 5(2) of this administrative regulation.

b. The applications for sources that are required to obtain state-origin permits shall be processed by the cabinet pursuant to Section 5(3) of this administrative regulation.

5. A source that is required to open an existing permit pursuant to the requirements of Section 6(3) of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after notification by the cabinet that the permit shall be reopened.

6. For permit renewal, an [a timely] application shall be submitted at least six (6) months prior to the date of permit expiration and in accordance with Section 5(7) [(6)] of this administrative regulation.

7. Applications for initial Phase II acid rain permits shall be submitted to the cabinet by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(b) Complete application.

1. To be deemed complete, an application shall provide all information required pursuant to subsection (3) of this section, except that applications for a permit revision shall supply the information only if it is related to the proposed change. This information shall be sufficient to evaluate the source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information pursuant to subsection (4) of this section.

2. The cabinet shall promptly provide notice to the applicant if the application is complete. Unless the cabinet mails a request for additional information or a notice of incompleteness to the applicant within sixty (60) days of receipt of an application, the application shall be deemed complete. [~~Unless the cabinet determines, and notifies the source, within sixty (60) days after receipt that an application is not complete, the application shall be deemed complete, except as provided in subparagraphs 3 and 4 of this paragraph.~~]

3. If, while processing an application that has been determined or deemed to be complete, the cabinet determines that additional information is necessary, it may request the information in writing and set a reasonable deadline for response.

4. For permit revisions processed through minor permit revision procedures, pursuant to Section 6(2)(a) of this administrative regulation, a completeness determination shall not be required.

(c) Confidential information. A source that submits to the cabinet an application for a federally enforceable permit containing a claim of confidential information shall authorize the cabinet to submit the information to the U.S. EPA, or shall submit a copy of the information directly to the U.S. EPA.

(2) Duty to supplement or correct application. An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts or corrected information. The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it filed a complete application but prior to issuance of a draft permit. Failure to supplement or correct the application shall be a violation of this administrative regulation and shall cause the source to be subject to applicable penalties, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

(3) Standard application form and required information.

(a) Applications for required permits shall be made on Form DEP 7007 which is incorporated by reference in 401 KAR 50:034. The applicant may submit the application using computer software if the cabinet has provided for the electronic preparation of applications.

(b) An application shall include all information needed to determine the applicability of or to impose an applicable requirement and to evaluate the required fee amount pursuant to 401 KAR 50:038.

(c) The application and attachments shall include the company name and address or, if different, the plant name and address; owner's and agent's name and address; name, address, and telephone number of the plant site manager or contact; a description of the source's processes and products by Standard Industrial Classification (SIC) Code, which is incorporated by reference in 401 KAR 51:017, including any associated with alternate scenarios identified by the source; and all of the elements specified in paragraphs (d) through (j) below:

(d) The application shall provide the following emissions-related information:

1. All emissions for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from an emissions unit, unless the units are exempted in Section 2(2) of this administrative regulation [~~this subsection~~]. The applicant shall also provide any additional information related to the emissions of air pollutants necessary to verify which requirements are applicable to the source, and other information necessary to collect permit fees owed under the fee schedule approved pursuant to 401 KAR 50:038.

a. For major sources, the applicable requirements for all emissions units shall be identified in the permit application.

b. For minor sources, all applicable requirements for the emissions units that cause the source to be subject to this administrative regulation shall be identified in the permit application.

c. Fugitive emissions from a source shall be identified in the permit application in the same manner as stack emissions, even if the source category in question is not included in the list of sources in Section 1(20)(b) of this administrative regulation.

2. Identification and description of all points of emissions described in subparagraph 1 of this paragraph in sufficient detail to establish the basis for fees and applicable requirements.

3. Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable standard reference test method. These methods are incorporated by reference in 401 KAR 50:015 or in the applicable administrative regulations.

4. Fuels, fuel use, raw materials, production rates, and operating schedules, to the extent [~~if~~] needed to determine or limit emissions.

5. Identification and [~~,~~] description[~~, and operating parameters~~] of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, if applicable, for all regulated air pollutants at the source.

7. Other information required by an applicable requirement, including information related to stack height limitations developed pursuant to 401 KAR 50:042.

8. Calculations on which the information in subparagraphs 1 through 7 of this paragraph is based.

(e) The application shall identify the following air pollution control requirements:

1. Citation and description of all applicable requirements; and

2. Description of or reference to the applicable test method for determining compliance with each applicable requirement.

(f) The application shall provide other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of these requirements.

(g) The application shall provide an explanation of proposed exemptions from otherwise applicable requirements.

(h) The application shall provide additional information required by the cabinet to define alternative operating scenarios identified by the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(j) of this administrative regulation.

(i) The application shall provide a compliance plan containing the following:

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and

be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the acid rain program, the compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as provided in the acid rain program for the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

(j) The application shall identify requirements for compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(4) Certification by responsible official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(28) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content. (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:

(a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:

1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;

3. If the SIP allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures;

4. For major sources, all applicable requirements for emissions units;

5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and

6. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(20)(b) of this administrative regulation.

7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q is more stringent than an applicable requirement promulgated pursuant to 42 USC 7651 through 7651o, both provisions shall be placed in the permit and shall be federally enforceable.

(b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) [~~(6)~~] of this administrative regulation.

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements including those specified in 42 USC 7414(a)(3) or 7661c(b) (Sections 114(a)(3) or 504(b) of the Act);

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this sentence; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

b. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information shall include all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

3. Each permit shall incorporate the following reporting requirements, if applicable:

a. Submittal of required monitoring reports at least every six (6) months. All deviations from permit requirements shall be clearly identified in the reports, and all reports shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

b. Prompt reporting [~~The cabinet shall be notified immediately~~] of deviations from permit requirements, including those attributed to upset conditions [~~as defined in the permit~~], the probable cause of the deviations, and corrective actions or preventive measures taken. The cabinet shall define prompt reporting in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements. [~~A written report shall be filed with the cabinet within ten (10) days of the deviation.~~]

(d) A permit condition prohibiting emissions exceeding allowances that the source lawfully holds in the acid rain program.

1. A permit revision shall not be required for increases in emissions authorized by allowances acquired pursuant to the acid rain program if the increases do not require a permit revision in another applicable requirement.

2. A limit shall not be placed on the number of allowances held by the source. However, a source shall not be allowed to use

allowances in defense of noncompliance with an applicable requirement.

3. Allowances shall be accounted for according to the procedures established in 40 CFR Part 73, which is incorporated by reference in Section 11 [~~10~~] of this administrative regulation.

(e) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to portions of the permit.

(f) Provisions stating the following:

1. The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and 42 USC 7401 through 7671q (the Act) and is grounds for an enforcement action [~~shall cause the source to be subject to applicable penalties~~], including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

2. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

3. The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

4. The permit shall not convey property rights or exclusive privileges.

5. The permittee shall furnish to the cabinet information that the cabinet may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the cabinet copies of records required to be kept by the permit.

(g) A provision to ensure that the source shall pay the fees to the cabinet pursuant to the approved fee schedule in 401 KAR 50:038.

(h) Emissions trading. A provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(i) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the cabinet. The terms and conditions:

1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario in which it is operating;

2. Shall [~~May~~] extend the permit shield described in subsection (6) of this section to all terms and conditions in each operating scenario; and

3. Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements.

(j) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of other applicable requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The cabinet shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emissions trades. [~~to the extent that the applicable requirements provide for trading increases and decreases without a case by case approval of each emissions trade.~~] The terms and conditions:

1. Shall include all terms required in subsections (1) and (3) of this section to determine compliance;

2. Shall [~~May~~] extend the permit shield described in subsection (6) of this section to all terms and conditions that allow increases and decreases in emissions; and

3. Shall meet all applicable requirements and the requirements of this administrative regulation.

4. Shall require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(2) Federally enforceable requirements. The cabinet shall include a notification in a federally enforceable permit that all terms and conditions in the permit, except the provisions that are specifically designated as state-origin permit conditions, shall be enforceable by the U.S. EPA and citizens.

(3) Compliance requirements. All permits shall contain the following elements for compliance:

(a) Pursuant to subsection (1)(c) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, shall be certified by a responsible official pursuant to Section 3(4) of this administrative regulation.

(b) Requirements that the permittee shall allow the cabinet or an authorized representative to perform the following:

1. Enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;

2. Have access to and copy, at reasonable times, any records required by the permit:

a. During normal office hours; and

b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet; and

3. Inspect, at reasonable times, any facilities, equipment, (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to the following:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

[~~1. Enter the premises of a source to inspect any emissions-related activity or records required in the permit;~~

~~2. Have access to and copy records required by the permit;~~

~~3. Inspect facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required in the permit; and~~

~~4. Sample or monitor substances or parameters to assure compliance with the permit or any applicable requirements.~~]

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures

adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and

e. Other facts as the cabinet may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the U.S. EPA as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, if specified by the cabinet.

(f) A specific condition that the source shall not be allowed to commence operation until [~~operate unless~~] it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) [~~(3)~~] of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet [~~is operating in accordance with a compliance plan which has met~~] the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the acid rain program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the acid rain program; or

4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

(7) Emergency provision.

(a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.

(b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;

3. During the period of the emergency the permittee took all reasonable steps[~~, as expeditiously as practicable,~~] to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

4. The permittee notified the cabinet as promptly as possible [~~immediately~~] and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3b of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective actions taken.

(c) In an enforcement proceeding, the permittee seeking to establish the occurrence of an emergency shall have the burden of proof.

(d) This provision is in addition to any emergency or upset provision contained in an applicable requirement.

Section 5. Permit Issuance and Renewal. (1) A person shall not construct, reconstruct, modify, or operate a source without a permit issued pursuant to this administrative regulation. A permit application submitted by an existing source which is deemed complete prior to the effective date of this administrative regulation may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete. [~~as required by this section.~~

~~(a) Permit issuance.~~

~~1. The cabinet shall issue a draft permit after the provisions of subsection (2)(a) and (b) of this section have been met.~~

2. The cabinet shall issue a proposed permit after the provisions of subsection (2)(a) through (d) of this section have been met.

3. The cabinet shall make a determination regarding the issuance of a final permit after the provisions of subsection (2)(a) through (c) of this section have been met.

(b) A permit application submitted by an existing source which is deemed complete prior to the effective date of this administrative regulation may be processed by the cabinet according to the requirements of the version of this administrative regulation in effect at the time the application was deemed complete.

(c) For an existing source that is required to have a federally enforceable permit, the following provisions shall apply:

1. A source may operate on the basis of its existing permit or an order issued by the cabinet until it is scheduled to submit a timely application.

2. If the source fails to submit a timely application, or if the source fails to submit additional information requested by the cabinet pursuant to Section 3(1)(a)3 of this administrative regulation, the source shall not operate except in compliance with a final permit.

3. If the source submits a timely application and additional information requested by the cabinet pursuant to Section 3(1)(a)3 of this administrative regulation, the source shall operate in compliance with an existing permit or order issued by the cabinet until the cabinet has issued a proposed permit. Thereafter, the source shall operate in compliance with the proposed permit until a final determination on the permit is made by the cabinet, after which the source shall operate in compliance with the final permit.

(d) An existing source that is required to have a state origin permit may operate on the basis of an existing permit or order issued by the cabinet until the source fails to submit a timely application, or the source fails to submit any additional information requested by the cabinet pursuant to Section (3)(1)(a)3 of this administrative regulation, or the provisions of subsection 2(a) and (b) of this section have been met and a final determination is made on the permit.

(e) For a source which commences construction, reconstruction, or modification on or after the effective date of this administrative regulation, the following provisions shall apply:

1. A source that is subject to 401 KAR 51:017 or 401 KAR 51:052 shall not construct, reconstruct, modify, or operate except in compliance with a final permit.

2. A major source not subject to 401 KAR 51:017 or 401 KAR 51:052 shall not construct, reconstruct, modify, or operate except in compliance with a proposed permit until a final determination on a permit is made. Thereafter, the source shall operate in compliance with the final permit.

3. A minor source required to have a federally enforceable permit shall not construct, reconstruct, modify, or operate except in compliance with a draft permit. After a proposed permit is issued, the source shall operate in compliance with the proposed permit until a final determination on the permit is made, after which the source shall operate in compliance with the final permit.

4. For a source required to have a state origin permit, the source shall not construct, reconstruct, modify, or operate except in compliance with a final permit. The cabinet shall issue a final permit after the provisions of subsection (2)(a) and (b) of this section have been met.]

(2) Federally enforceable permits. The cabinet shall use the procedures provided in this subsection to issue a permit if the source is a major source, a minor source subject to a federally enforceable requirement and required by the U.S. EPA to obtain a federally enforceable permit, or a minor source that is subject to a federally enforceable requirement and requests that the cabinet issue a federally enforceable permit.

(a) Draft permit.

1. The cabinet shall deny the permit or issue a draft permit within sixty (60) days after the application is deemed complete. A minor source shall construct and operate in compliance with the draft permit until a final permit is issued or denied, except as provided in paragraph (c)4 of this subsection.

2. Public and affected state review. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation.

(b) Proposed permit.

1. The cabinet shall deny the permit or issue a proposed permit within sixty (60) days after the public and affected state review required in Sections 7 and 8 of this administrative regulation is completed. A major source shall construct and operate in compliance with the proposed permit until the final permit is issued, except as provided in paragraphs (c)2 and 3 of this subsection.

2. If a proposed permit is issued, the cabinet shall submit it to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(c) Final permit.

1. The cabinet shall issue or deny a final permit within eighteen (18) months after receiving a complete application, except as provided in paragraphs 2 and 3 of this subsection.

2. A source subject to 401 KAR 51:017 shall construct and operate in compliance with a final permit, except as provided in subparagraph 3 of this paragraph. The cabinet shall issue or deny a final permit for these sources within twelve (12) months after receiving a complete application.

3. An existing source, including a source subject to 401 KAR 51:017, submitting an application pursuant to Section 3(1)(a)1 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until the final permit is issued or denied. The cabinet shall make a final determination on at least one-third (1/3) of these applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty-six (36) months after program approval.

4. An existing source submitting an application pursuant to Section 3(1)(a)2 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet, until the final permit is issued or denied.

(d) The cabinet may extend the time periods specified in paragraphs (a) and (b) of this subsection with the consent of the applicant, however the time periods specified in paragraph (c) of this subsection shall not be exceeded.

[(2) Permit issuance provisions. As required in subsection (1) of this section, the following provisions, as applicable to the source, shall be met before a final determination on the permit is made:

(a) The cabinet has received a complete permit application, pursuant to Section 3(1)(b) of this administrative regulation, except that a complete application need not be received before issuance of a general permit pursuant to Section 4(4) of this administrative regulation.

(b) The conditions of the permit provide for compliance with all applicable requirements.

(c) The requirements for public participation, pursuant to Section 7 of this administrative regulation, have been met.

(d) The requirements for notifying and responding to affected states, pursuant to Section 8 of this administrative regulation, have been met.

(e) The requirements for review by the U.S. EPA pursuant to Section 9 of this administrative regulation have been met, and the U.S. EPA has not objected to the issuance of the permit within the time period specified in Section 9(3) of this administrative regulation.]

(3) State origin permits. If the source is not subject to a federally enforceable requirement or the source is a minor source not required by the U.S. EPA to have a federally enforceable permit, the cabinet shall use the procedures provided in this subsection to issue a permit.

(a) The cabinet shall deny or issue a final permit within sixty (60) days after receiving a complete application. The cabinet may extend

this time period with the consent of the applicant.

(b) An existing source submitting an application pursuant to Section 3(1)(a)3 of this administrative regulation shall operate in compliance with the existing permit or order of the cabinet until a final permit is issued or denied.

(4) [~~(3)~~] Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this administrative regulation.

(a) [~~1.~~] A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

(b) [~~2.~~] If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance schedule shall be revised or added, as appropriate, pursuant to Section 4(3)(f) of this administrative regulation.

~~[(4) Final action on permit applications.~~

~~(a) Except as provided in the acid rain program for the permitting of affected sources, and in paragraphs (b) and (c) of this subsection, the cabinet shall make a final determination on the permit or permit revision eighteen (18) months after receiving a complete application.~~

~~(b) For the initial round of permit applications submitted pursuant to Section 3(1)(a) of this administrative regulation, the cabinet shall make a final determination on at least one third (1/3) of the applications during each twelve (12) month period beginning twelve (12) months after the approval date of the state's permit program by the U.S. EPA, so that a final action shall be taken on all applications within thirty-six (36) months after program approval. Applications shall be processed in the order received.~~

~~(c) For sources which are constructing, reconstructing, or modifying and which are subject to 401 KAR 51:017, the cabinet shall make a final determination on the permit application within twelve (12) months from the date of receipt of a complete application.]~~

(5) [~~(d)~~] If an existing source submits a timely and complete application for a permit or permit revision, pursuant to Section 3 of this administrative regulation, the source's failure to have a permit or permit revision shall not be a violation of this administrative regulation until the cabinet makes a final determination to approve or deny the permit or permit revision [~~on the permit application~~]. The sources authority to operate shall cease to apply if, subsequent to the completeness determination made pursuant to Section 3(1)(b) of this administrative regulation, the applicant fails to submit by the deadline, specified in writing by the cabinet, additional information requested pursuant to Section 3(1)(b)3 of this administrative regulation [~~required to process the application~~].

(6) [~~(5)~~] General requirements.

~~[(a) A person shall not construct, reconstruct, modify, or operate a source in a manner different from the description contained in the permit application.~~

~~(b)~~] For a source that is constructing, reconstructing, or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(7) [~~(6)~~] Permit duration and renewal.

(a) Permit duration. A permit issued after the effective date of this administrative regulation shall remain in effect for a fixed term of five (5) years, except that[~~:~~

~~1.~~] permits for solid waste incineration units that combust municipal waste shall remain in effect for a period of twelve (12) years and shall be reviewed by the cabinet at least every five (5) years[~~; and~~

~~2. One fifth (1/5) of the permits issued on the basis of the initial round of permit applications received pursuant to Section 3(1)(a) of this administrative regulation shall expire during each twelve (12) month period beginning November 15, 1997, so that all permits have expired by November 14, 2002. Expiration dates shall be assigned to permits in the order they are issued~~].

(b) Permit renewal.

1. Permit expiration shall terminate the source's right to operate unless a timely and complete renewal application has been submitted pursuant to Section 3(1)(a)6 of this administrative regulation.

2. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and for affected state and U.S. EPA review, that apply to initial permit issuance.

3. If a timely and complete application for a permit renewal is submitted consistent with Section 3 of this administrative regulation, but the cabinet fails to issue or deny the renewal permit before the end of the term of the previous permit, all the terms and conditions of that permit, including any permit shield that is issued pursuant to Section 4(6) of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

4. If the cabinet fails to act promptly on a permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 6. Permit Revisions and Reopenings. (1) Administrative permit amendment procedures. An administrative permit amendment may be made by the cabinet pursuant to the following:

(a) The cabinet shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on the request, and may incorporate the changes without providing notice to the public or affected states if it determines the permit revision has been made pursuant to this paragraph.

(b) The cabinet shall submit a copy of the revised permit to the U.S. EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(d) The cabinet may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for the administrative permit amendment as defined in Section 1(3) of this administrative regulation, if the amendment meets the relevant requirements of Sections 4 through 9 of this administrative regulation for significant permit revisions.

(e) Administrative permit amendments for the acid rain portion of the permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651q (Title IV of the Act) [~~the acid rain program~~].

(2) Permit revisions. Except as provided in the acid rain program, the procedures for revising a permit shall be as follows:

(a) Minor permit revision procedures.

1. Minor permit revision procedures shall be used for permit revisions that:

a. Do not violate an applicable requirement;

b. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

c. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

d. Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. These terms and conditions include:

(i) A federally enforceable emissions cap assumed to avoid

classification as a modification in a provision of 42 USC 7401 through 7514a (Title I of the Act) [~~the SIP~~]; and

(ii) An alternative emissions limit approved pursuant to **42 USC 7412(i)(5) (Section 112(i)(5) of the Act)** [~~401 KAR 57:060~~];

e. Are not modifications in a provision of 42 USC 7401 through 7514a (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

f. Are not required to be processed as a significant permit revision.

2. Notwithstanding this paragraph and paragraph (b)1 of this subsection, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements.

3. Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

d. Completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 8 and 9 of this administrative regulation.

4. U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete permit revision application, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 8 and 9(2) of this administrative regulation, of the requested minor permit revision.

5. Timetable for issuance. The cabinet shall not issue a final minor permit revision until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

a. Issue the minor permit revision as proposed;

b. Deny the minor permit revision application;

c. Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or

d. Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5a through c of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and

b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(20) of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.

b. The source's suggested draft permit revision.

c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.

d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. Completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance. Subsection (2)(a)5 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45)-day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5.The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall normally be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of

this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if: [~~Operational flexibility. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph. A source may make changes within a permitted facility without a permit revision if:~~]

1. The changes are not modifications pursuant to any provision of 42 USC 7401-7515 (Title I of the Act) or subject to 42 USC 7651 [~~747651~~] through 7651o (Title IV of the Act);

2. The changes do not result in emissions which exceed the emissions allowable under the permit, whether expressed as a rate of emissions or in terms of total emissions;

3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:

a. A brief description of the change within the permitted facility;

b. The date on which the change will occur;

c. Any change in emissions; and

d. Any permit term or condition that is no longer applicable as a result of the change.

4. The permit shield described in Section 4(6) of this administrative regulation shall not apply to any change made pursuant to this paragraph.

5. The change shall be incorporated into the permit at renewal.

(3) Reopening for cause.

(a) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the following circumstances:

1. Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 5(7) [~~(6)~~](b)3 of this administrative regulation.

2. Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the acid rain program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit;

3. The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or

4. For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(b) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(c) Reopenings in paragraph (a) of this subsection shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (3) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 7. Procedures for Public Participation. (1) The cabinet shall provide public notice of the opportunity to comment for the following permit actions:

(a) Issuance of a draft permit;

(b) Intended denial of a permit application;

(c) Issuance of a draft significant permit revision;

(d) Issuance of a draft general permit;

(e) Issuance of a permit renewal;

(f) Scheduling of a public hearing pursuant to subsection (7) of this section[~~; and~~

~~(g) Any other permit related activity that the cabinet determines to be of substantial interest to the public~~].

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the following persons:

(a) The applicant;

(b) For sources subject to 401 KAR 51:017, officials and agencies having authority over the locations where the source will be located, as follows:

1. The administrator of the U.S. EPA through the appropriate regional office;

2. Local air pollution control agencies;

3. The chief executive of the city and county;

4. Any comprehensive regional land use planning agency; and

5. Any federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source;

(c) Affected states; and

(d) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of

the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4) Public notice and the notice for those on the mailing list shall include the following minimum information:

(a) Name and address of the Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, Division for Air Quality;

(b) Name and address of the permit applicant and, if different, the name and address of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity involved in the permit action;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, such as:

1. Copies of the draft permit;

2. The application and relevant supporting material, including permit applications, compliance plans, permits, and monitoring and compliance certification reports, except for confidential information; and

3. All other materials available to the cabinet that are relevant to the permit decision;

(e) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of hearings scheduled for the permit; and

(f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(5) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the commentors and of the issues raised during the public participation process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing;

(b) Administrative permit amendments; and

(c) Fast track permit revisions pursuant to the acid rain program.

Section 8. Notice to Affected States. (1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet is not required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a permit, permit revision, or permit renewal if it has failed to take action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application,

proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA will object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The cabinet shall not issue a **federally-enforceable** permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(c) [~~(d)~~] The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(d) [~~(e)~~] If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f, (Title V of the Act).

(e) [~~(f)~~] If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 7 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(f) [~~(g)~~] If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit pursuant to Sections 4 through 6 of this administrative regulation, and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection. The source shall not be in violation of the requirement to have submitted a timely and complete application.

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of 42 USC 7401 through 7661q, or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the confidentiality claim to the U.S. EPA together with the information to which it applies.

Section 10. For Section 3(1)(a)1 of this administrative regulation, one-third (1/3) of the existing major sources with the lowest score shall be calculated using the following formula:

$$(1 + n)(1 + p/2) = \text{Score}$$

Where: "n" shall equal the number of emission units at the source as contained in the most recent version of the Kentucky Emissions Inventory System (KyEIS); and

"p" shall equal the sum of the number of pollutants, for which there is a national ambient air quality standard, emitted at each emission unit.

Section 11. [~~10.~~] Materials Incorporated by Reference. (1) The following documents relating to affected sources subject to the acid rain program, are hereby incorporated by reference:

(a) 40 CFR Part 72, Permits Regulation, as published in the Federal Register, January 11, 1993 (58 FR 3650-3687).

(b) 40 CFR Part 73, Allowance System, as published in the Federal Register, January 11, 1993 (58 FR 3687-3701).

(c) 40 CFR Part 75, Continuous Emission Monitoring, as published in the Federal Register, January 11, 1993 (58 FR 3701-3757).

(d) 40 CFR Part 77, Excess Emissions, as published in the Federal Register, January 11, 1993 (58 FR 3757-3760).

(e) 40 CFR Part 78, Appeal Procedures for acid rain program, as published in the Federal Register, January 11, 1993 (58 FR 3760-3766).

(2) Copies of the documents incorporated by reference in subsection (1) of this section 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:

(1) Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky, 40601, (502) 564-3382;

(2) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky, 41105-1507, (606) 325-8569;

(3) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 843-5475;

(4) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(5) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky, 41701, (606) 439-2391;

(6) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky, 42301, (502) 686-3304;

(7) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

~~[Section 1. Prohibitions. (1) No person shall construct, reconstruct, alter, or modify a source unless a construction permit to do so has been issued by the cabinet.~~

~~(2) No person shall use, operate, or maintain an air contaminant source unless:~~

~~(a) A permit to so operate the air contaminant source has been issued by the cabinet and is currently in effect;~~

~~(b) The cabinet or the court has issued to the source a compliance order with a compliance schedule consistent with the Clean Air Act; or~~

~~(c) The source has demonstrated to the satisfaction of the cabinet that it is in compliance with the provisions of all applicable regulations including all provisions relating to public participation, a complete application for a permit to operate has been accepted by the cabinet and the cabinet has notified the applicant that the application is complete. Operation authorized by this paragraph shall expire thirty (30) days after the date of notification made to the source by the cabinet that an operating permit fee balance as specified by 401 KAR 50:036, Section 5(1) is due or immediately upon notification to the source by the cabinet that the source operating permit is denied.~~

~~(3) No person shall use, operate, or maintain a source which has changed ownership after a shutdown of six (6) months or more unless:~~

~~(a) The provisions of 401 KAR 50:055, Section 3(1) are met;~~

~~(b) The source was issued an operating permit and was in~~

compliance with all applicable regulations under the previous ownership; and

(c) The provisions of Section 5(2) of this regulation are met.

Section 2. Applications. (1) Applications for permits required under Section 1 of this regulation shall be made on forms prepared by the cabinet for such purpose and shall contain such information as the cabinet shall deem necessary to determine whether the permit should be issued.

(2) Applications for permits shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the source owner or operator; or, in the case of political subdivisions, by the highest executive official of such subdivision. Such signature shall constitute personal affirmation that the statements made in the application are true and complete.

(3) The information submitted in the application shall, when specifically requested by the cabinet, include an analysis of the characteristics, properties and volume of the air contaminants based upon source or stack samples of the air contaminants taken under normal operating conditions. Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the permit application shall result in denial of the permit.

(4) An application for a permit may include one (1) or more affected facilities provided that all are contained within one (1) source. A person may apply for an amended permit to include new affected facilities provided that such new facilities are within the same source.

Section 3. Consideration of Applications. (1)(a) The cabinet shall deny an application for a permit if the cabinet determines that any provision of any applicable regulation is not met.

(b) The cabinet shall deny an application for a permit if the applicant willfully makes material misstatements in the application or amendments thereto.

(c) When required by the regulations of Title 401, Chapters 50 to 65, the cabinet shall base the determination of compliance with ambient air quality standards and prevention of significant air quality increments upon either:

1. Air quality models in accordance with 401 KAR 50:040; or

2. Ambient air quality monitoring in accordance with 401 KAR 53:010.

(d) In cases where no emission standards have been prescribed by regulation, the cabinet shall require the use of all available, practical and reasonable methods to prevent and control air pollution.

(2) Determinations and notifications.

(a) Operating permits.

1. Within thirty (30) days after receipt of an application to operate, the cabinet shall advise the owner or operator as to whether or not the application is complete, or if additional information is necessary in order to evaluate the application.

2. For sources which are subject to regulation in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year in any one (1) year, the cabinet shall make its determination concerning the application including its approval, conditional approval, or denial of the operating permit application within sixty (60) days after receipt of a complete operating permit application. For all other sources, the time period for the cabinet's determination shall be within thirty (30) days of receipt of the complete application. The cabinet may extend each of the time periods specified in this paragraph if the cabinet determines that additional time is necessary. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any conditional approvals or denials.

(b) Construction permits. This paragraph shall apply to the proposed construction, modification, alteration or reconstruction of any source that is not subject to Section 4 of this regulation.

1. Within thirty (30) days after receipt of an application to construct, reconstruct, modify, or alter, or any addition to such application, the cabinet shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subparagraph 2 of this paragraph shall be the date on which the cabinet makes a determination that the application is complete.

2. The cabinet shall make its determination concerning the application including its approval, conditional approval, or denial of the application within thirty (30) days after receipt of a complete application, unless the cabinet determines that an additional period of time is necessary to adequately review the application. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any conditional approvals or denials.

Section 4. Procedures for Public Participation. This section shall apply to the proposed major source construction, major modifications as defined in Title 401, Chapter 51, or modifications to any source which will cause an increase in the potential to emit of 100 tons per year or more of any one (1) pollutant.

(1) Within thirty (30) days after receipt of an application to construct, reconstruct, or modify or any addition to such application, the cabinet shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of subsections (2), (6) and (7) of this section shall be the date on which the cabinet makes a determination that the application is complete.

(2) Within thirty (30) days after the receipt of a complete application, the cabinet shall:

(a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.

(b) Make available in at least one (1) location in each region in which the proposed source would be constructed, reconstructed, or modified, a copy of all materials submitted by the owner or operator, a copy of the cabinet's preliminary determination and a copy or summary of other materials, if any, considered by the cabinet in making the preliminary determination; and

(c) For sources subject to 401 KAR 51:017, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification if applicable, and of the opportunity to comment in writing and of the opportunity to request a public hearing to receive written or oral comments. The cost of such advertisement shall be borne by the applicant.

(d) For all other sources subject to this section, notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source would be situated, of the application, the preliminary determination, and of the opportunity to comment in writing. The cost of such advertisement shall be borne by the applicant.

(3) A copy of the notice required pursuant to this section shall be sent to the following persons (any person otherwise entitled to receive notice under this subsection may waive his/her rights to receive notice):

(a) The applicant;

(b) Officials and agencies having cognizance over the locations where the source will be situated as follows: the Administrator of the U.S. EPA through the appropriate regional office; local air pollution control agencies; the chief executive of the city and county; any comprehensive regional land use planning agency; and any state, federal land manager or Indian governing body whose land may be affected by the emissions from the proposed source; and

(c) Persons on a mailing list compiled by including those who

request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area, and notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as state-funded newsletters, environmental bulletins, or state law journals. The cabinet may update the mailing list from time to time by requesting written indication of continued interest from those listed. The cabinet may delete from the list the name of any person who fails to respond to such a request.

(4) All public notices issued under this regulation shall contain the following minimum information:

(a) Name and address of the cabinet and division processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

(d) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application; and

(e) A brief description of the comment procedures required by subsections (5) and (8) of this section.

(f) In addition to the general public notice described in paragraphs (a) to (e) of this subsection, the public notice for a hearing under subsection (8) of this section shall be given at least thirty (30) days before the hearing and shall contain the following information: reference to the date of previous public notices relating to the permit; date, time, and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(5) Public comments submitted in writing within thirty (30) days after the date such information is made available shall be considered by the cabinet in its final decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. All comments shall be made available for public inspection at the same location in the region at which the cabinet made available preconstruction information relating to the proposed source.

(6) The cabinet shall take final action on an application subject to this section regarding its approval, conditional approval, or denial of the application. The cabinet shall notify the applicant, in writing, of its approval, conditional approval, or denial of the application and shall set forth its reasons for any conditional approvals or denials. Such notification shall be made available for public inspection at the location in the region at which the cabinet made available preconstruction information relating to the proposed source or modification. The public shall be notified of the cabinet's final action on an application subject to this section by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be situated. The cost of such advertisement shall be borne by the applicant.

(a) For sources subject to 401 KAR 51:017 and for which a public hearing has been requested and held, the cabinet shall take final action within 150 days after receipt of a complete application.

(b) For all other sources subject to this section, the cabinet shall take final action within ninety (90) days after receipt of a complete application.

(7) The cabinet may extend each of the time periods specified in subsections (2) and (5) of this section by no more than thirty (30) days or such other period as agreed to by the applicant and the cabinet deems necessary. The time period specified in subsection (6) of this section shall then be extended by such period as extended for subsections (2) and (5) of this section and may be extended for such other period as agreed to by the applicant and the cabinet deems necessary. In accordance with Federal Regulation 40 CFR 52.21(r), the cabinet shall in no case exceed one (1) year from the date of receipt of a complete application for taking final action on an application subject to 401 KAR 51:017.

(8)(a) For sources subject to 401 KAR 51:017, the cabinet shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit(s). The cabinet also may hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision. Public notice of the hearing shall be given as specified in paragraphs (b) and (c) of this subsection.

(b) Whenever a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(c) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subsection (5) of this section shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost.

Section 5. Terms and Conditions. (1) Permits issued hereunder shall be subject to such terms and conditions set forth and embodied in the permit as the cabinet shall deem necessary to ensure compliance with its standards. Such terms and conditions may include maintenance and availability of records relating to operations which may cause or contribute to air pollution including periodic source or stack sampling of the affected facilities.

(2) In the case of a transfer of ownership or name change of a source, the new owner or owner respectively shall abide by any permit to operate issued by the cabinet to the previous owner or to the same owner under the previous source name. The new owner or owner shall notify the cabinet of the change in ownership and/or source name within ten (10) days following the change in ownership or source name and shall apply for a duplicate permit to operate in the event of a change in the name of the source.

(3) When supported by justification which the cabinet deems adequate, the cabinet may, upon request by a source owner or operator, extend the termination date of an operating permit by a period not to exceed 180 days for the purpose of allowing sufficient time for a source to correct such deficiencies in the application as have been identified by the cabinet and to allow completion of the application review by the cabinet.

Section 6. Exemptions. The provisions of Section 1 of this regulation shall not apply to the affected facilities or sources listed in this section. These exemptions shall not relieve any source from the requirements of any standard set forth in an applicable regulation or a permit issued by the cabinet. Affected facilities or sources of pollutants located in areas designated as nonattainment for such pollutants which were required to obtain permits pursuant to subsections (11) and (14) of this section prior to the effective date of this regulation shall maintain the permit and any applicable requirements when the area is redesignated in 401 KAR 51:010 or 40 CFR 81.318, unless a state implementation plan which provides for other controls is approved by the U.S. EPA. The cabinet may require the owner or operator to demonstrate compliance with all applicable regulations.

(1) Except as provided elsewhere in this section, those affected facilities to which no regulation is applicable and which emit an air pollutant to which no ambient air quality standard applies.

(2) Incinerators with a charging rate of less than 500 pounds per hour except those subject to 401 KAR 51:017, 401 KAR 51:052, Title 401, Chapter 57, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022.

~~(3) Except as provided in 401 KAR 59:010, internal combustion engines whether fixed or mobile, and vehicles used for transport of passenger or freight.~~

~~(4) Direct fired sources used for heating and ventilating.~~

~~(5) Open burning as set forth in 401 KAR 63:005.~~

~~(6) Indirect heat exchangers at a source with a total heat input capacity of less than fifty (50) million BTU per hour which use natural gas, liquid petroleum gas, or distillate fuel oil as a main fuel or combinations of these as main and standby fuels and which are not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.~~

~~(7) Any indirect heat exchanger with a heat input capacity of less than fifty (50) million BTU per hour which uses natural gas or liquid petroleum gas as a main fuel or combinations of these as main and standby fuels and which is not subject to the requirements of 401 KAR 51:017 or 401 KAR 51:052.~~

~~(8) Publicly owned roads.~~

~~(9) Feed grain mills having a hammermill with a rated capacity of ten (10) tons per hour or less, provided that the source does not include a grain dryer.~~

~~(10) Sawmills which produce only rough cut or dimensional lumber from logs and which have a rated capacity of 5,000 board feet per hour or less provided the source does not include an indirect heat exchanger or waste wood burner subject to regulation in Title 401, Chapter 59 or 61.~~

~~(11) Except as provided in this subsection, all sources whose uncontrolled emissions are less than twenty five (25) tons per year and whose potential to emit is less than or equal to five (5) tons per year of each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide. This exemption shall not apply to sources subject to regulation in Title 401, Chapter 57, 40 CFR 60, 401 KAR 63:020, 401 KAR 63:021, or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for such pollutants in 401 KAR 51:010; or to incinerators.~~

~~(12) Those sources which install air pollution control equipment where none was required. The owner or operator shall notify the cabinet in writing of such additions.~~

~~(13) Those sources which voluntarily modify or replace their air pollution control equipment to provide an equivalent or more efficient control of air pollutants. However, the owner or operator of such sources shall submit to the cabinet a complete registration form for the cabinet's concurrence at least forty five (45) days before installation of such control equipment.~~

~~(14) Those affected facilities which are a part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of each of the following pollutants: particulate matter, sulfur dioxide, volatile organic compounds, nitrogen oxides, and carbon monoxide, provided that such increase does not subject the source to any other regulation. The owner or operator shall notify the cabinet in writing of such increases and construction projects thirty (30) days prior to commencing the construction project. This exemption shall not apply to affected facilities which are subject to regulation in Title 401, Chapter 57, 40 CFR 60, 401 KAR 63:020, or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for such pollutants in 401 KAR 51:010; or to incinerators.~~

~~(a) The owner or operator may not circumvent this regulation by separating what would normally be one (1) construction project into two (2) or more projects.~~

~~(b) If the owner or operator notifies the cabinet of or applies for a construction permit for another construction project before the first construction project becomes operational, then the two (2) construction projects shall be considered as one (1) construction project.~~

~~(c) If the owner or operator can demonstrate, through engineering analysis and internal documents, that two (2) or more construction projects were planned during separate time frames and involve separate independent facilities, the cabinet may allow the construction projects to be treated separately.~~

~~(15) Emitters of nonprocess fugitive emissions that are not part of a source that is otherwise subject to regulation.~~

~~Section 7. Source Obligation. (1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this regulation who commences construction after June 6, 1979 without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action as provided under KRS 224.994.~~

~~(2) Approval to construct shall become invalid if construction is not commenced within eighteen (18) months after receipt of such approval, if construction is discontinued for a period of six (6) months or more, or if construction is not completed within a reasonable time. The cabinet may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.~~

~~(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the requirements of the cabinet and any other requirements under local, state, or federal law.~~

~~Section 8. Relocation of Minor Sources. The owner or operator of a minor source who is planning to relocate the source to a new site without any modification, may do so after applying for a duplicate operating permit, provided that the source has been issued and is operating under a current operating permit and is currently in compliance with all applicable regulations. The owner or operator shall submit an application for a duplicate operating permit on forms provided by the cabinet, including the duplicate operating permit fee, at least ten (10) days prior to the planned relocation. If the location at the new site would cause the source to be subject to any additional or different regulation than is currently applicable at the previous location, the source shall be considered to be a new source and shall be subject to Section 1 of this regulation.~~]

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 6, 1993 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 50:038. Title V emissions fee.

RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050(10), 224.20-100, 224.20-130, 40 CFR Part 70, 42 USC 7401-7671q, et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230, 224.20-050(10)

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the assessment of fees necessary to fund the state operating permit program required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations

promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992.

Section 1. Definitions. As used in this administrative regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.

(2) "Actual emissions" means the amount of a pollutant actually emitted in the calendar year immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the Kentucky Emissions Inventory System (KyEIS).

(3) "Designated representative" means a responsible person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the acid rain program.

(4) "Emissions fee" means the amount of money assessed by the cabinet to recover the cost of administering the operating permit program.

(5) "Fiscal year" means the period beginning July 1 and ending the following June 30.

(6) "Hazardous air pollutant" means a pollutant listed in 401 KAR 57:061.

(7) "Kentucky emissions inventory system" means a database used by the cabinet to record, among other information, emissions of air pollutants from Kentucky sources.

(8) "Operating permit program" means the state operating permit program required by Title V of the Clean Air Act (42 USC 7661 through 7661f) and regulations promulgated by the U.S. EPA at 40 CFR Part 70, as published in the Federal Register, 57 FR 32250, on July 21, 1992. This includes but is not limited to the review of permit applications and exemptions; the issuance of permits to air pollution sources; inspections of air pollution sources; enforcement activities other than prosecutions in a court of law or administrative hearing; air quality and emissions monitoring, including quality assurance; the preparation of reports, plans, regulations, and statutes; responses to inquiries; preparing inventories and tracking emissions; the preparation and maintenance of records, including computerized data bases; air quality modeling, analyses, and demonstrations; and providing direct and indirect support through a small business technical assistance program. The operating permit program does not mean activities directly related to the control of asbestos emissions from renovations or demolitions, the Asbestos Hazard Emergency Response Act, or costs directly related to vehicle inspection and maintenance.

(9) "Responsible official" means one (1) of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For affected sources, if requested by the source, the designated representative.

(10) "Subject emissions" means actual emissions, as recorded in the Kentucky emissions inventory system, of sulfur dioxide, oxides of nitrogen, PM_{10}, lead, volatile organic compounds, hazardous air pollutants listed in 401 KAR 57:061 for which a standard applies, or a pollutant subject to a standard contained in Section 111 of the Act, [~~or ethyl alcohol,~~] from an air pollution source subject to this administrative regulation, except that actual emissions in excess of 4,000 tons of a single pollutant from a source shall not be subject emissions. Pollutants subject only to 42 USC 7412r (Section 112(r) of the Act) [~~42 USC 7401 through 7671q~~], and pollutants that are class I or class II substances under 42 USC 7671 through 7671q and which are not otherwise regulated shall not be subject emissions.

Section 2. Applicability. (1) This administrative regulation shall apply to each air pollution source which is a major source as defined in 401 KAR 50:035, Section 1(20) or which is subject to 42 USC 7411, 7412, 7470 through 7492, or 7501 through 7515 (Section 111, Section 112, Part C, or Part D of the Act) required to have a permit issued by the cabinet and for which a final rule exempting the source from the permitting requirements of 40 CFR Part 70 has not been published by the U.S. EPA. [~~which emitted:~~

~~(a) Twenty-five (25) tons per year or more of sulfur dioxide, oxides of nitrogen, PM_{10}, volatile organic compounds, a pollutant subject to a standard contained in Section 111 of the Act, or ethyl alcohol, or any combination of these pollutants totalling twenty-five (25) tons per year; or~~

~~(b) Two (2) tons per year of a single hazardous air pollutant or five (5) tons per year of any combination of hazardous air pollutants.~~]

(2) This administrative regulation shall not apply to:

(a) Mobile sources; [~~or~~]

(b) Sources located in an air pollution control district granted concurrent jurisdiction by the cabinet under KRS 224.20-130;

(c) [~~Additionally, this administrative regulation shall not apply to~~] An electric utility unit exempted [~~from this fee~~] by 42 USC 7651g, unless a substitute unit has been approved by the administrator of the U.S. EPA pursuant to 42 USC 7651c; or

(d) A [~~or to any~~] substitute unit approved by the [~~Administrator of the~~] U.S. EPA pursuant to 42 USC 7651c, if the cabinet has been notified in writing at least thirty (30) days prior to the fee assessment established in Section 3(1) of this administrative regulation.

Section 3. Fee Assessment. (1) On or about July 1, 1994, and on or about July 1 of each succeeding year, the division for air quality shall calculate and assess an annual emissions fee based on subject emissions for each air pollution source subject to this administrative regulation and shall provide written notification to the source of the amount of fee due. If a pollutant qualifies as more than one (1) of the subject emissions listed in Section 1(10) of this administrative regulation, it shall be assessed as a single subject emission.

(2) Determining subject emissions. At least four (4) months but not more than twelve (12) months prior to assessing the emissions fee, the cabinet shall provide each source subject to the emissions fee a written copy of the KyEIS containing the most recent information appropriate to that source. Within thirty (30) days of the date this information is mailed, each source shall provide the cabinet with all information necessary to determine its subject emissions. The information shall be accompanied by a statement signed by a responsible official or by a designated representative, as appropriate, certifying the accuracy of the information. Each day past the deadline for submitting information that the source fails to submit the information shall be a separate violation of this administrative regulation. If no response is received by the deadline, the cabinet shall estimate the subject emissions for the source based on previous actual emissions and on other information considered pertinent by the cabinet.

(3) Fee assessment. At least sixty (60) days prior to assessing the fee, the cabinet shall determine the subject emissions for each source, based on the information provided by the source and on other information available to the cabinet. The cabinet shall notify the source of its determination for subject emissions at least forty-five (45) days prior to assessing the fee. Assessment of the subject emissions shall be a final determination by the cabinet. If the source fails to notify the cabinet of an error in the determination of subject emissions within thirty (30) days after the date the determination is mailed by the cabinet, the source shall be assessed a fee based on the cabinet's determination. If the source notifies the cabinet in a timely manner that there is an error in the determination of its subject emissions, and the cabinet disagrees with the assessment by the source, the cabinet shall notify the source, in writing, specifying the reasons for rejecting the error notification.

(4) Computation of emissions fee. The cabinet shall compute the emissions fee as follows:

(a) For fiscal year 1995 the emissions fee shall be **$5,924,900** [~~6,652,700~~], and for fiscal year 1996 the emissions fee shall be **$7,085,400** [~~7,240,000~~]. [~~the amount of money approved by the U.S. EPA as adequate to administer the operating permit program and authorized by the Kentucky General Assembly for that purpose.~~] The cost per ton of the subject emissions shall be the emissions fee, **minus $150 times the number of sources subject to subsection (5)(b) of this section,** divided by the total number of tons of subject emissions from all sources subject to this administrative regulation **which emit twenty-five (25) tons or more of subject emissions**.

(b) Except as provided in paragraph (c) of this subsection, the emissions fee for each succeeding fiscal year shall be **$7,085,400** [~~7,240,000~~] adjusted annually using the method provided in 40 CFR 70.9(b)(2)(iv) [~~determined pursuant to 40 CFR 70.9(b)(2)(iv)~~]. The cost per ton of subject emissions shall be determined as prescribed in paragraph (a) of this **subsection** [~~administrative regulation~~].

(c) Notwithstanding the provisions of paragraph (b) of this subsection the emissions fee for a fiscal year may be increased by an amount greater than that calculated pursuant to 40 CFR 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or may be decreased from the previous fiscal year if the cabinet determines after public hearing and after approval by the U.S. EPA that the increase is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of administering the operating permit program.

(5) Payment of fees.

(a) A source subject to this administrative regulation which emitted twenty-five (25) tons or more of subject emissions shall pay a portion of the emissions fee which shall be determined by multiplying the subject emissions from the source, expressed in tons to the nearest ton, by the cost per ton of subject emissions**, and subtracting from that amount any portion of unexpended emissions fees which are carried forward from the previous year in an amount proportional to that paid by the source during the previous year**. The [A] source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the cabinet mails to the source the written notification of the amount of fee due, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA.

(b) A source subject to this administrative regulation which emitted less than twenty-five (25) tons of subject emissions shall pay an annual fee of $150. The source shall pay the fee by check or money order, made payable to the Kentucky State Treasurer, within sixty (60) days after the date on which the cabinet mails to the source the written notification of the amount of fee due, except that a source shall not be required to pay a fee prior to approval of the state permit program by the U.S. EPA.

(6) Enforcement.

(a) Each day after the deadline for payment of the source's portion of the emissions fee during which the source fails to pay the fee shall be a separate violation of this administrative regulation.

(b) Failure to pay the fee within ninety (90) days after the date on which the cabinet notifies the source of the amount of fee due shall result in:

1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of federal taxes); and

2. Suspension of the source's permit to operate until the fee is paid or until the cabinet has approved a schedule of payment.

Section **4.** [~~5.~~] Use of Fees. All fees collected pursuant to this administrative regulation shall be deposited in a trust and agency account and shall be used solely for funding the operating permit program.

PHILLIP J. SHEPHERD, Secretary
E. DOUGLAS STEPHAN, Commissioner
APPROVED BY AGENCY: October 6, 1993
FILED WITH LRC: October 6, 1993 at noon

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65.

RELATES TO: KRS 224.01-010, 224.10-100, 40 CFR ch. I, Appendices B and A to 40 CFR 50, 40 CFR 53, 55, 60, 42 USC 7410

STATUTORY AUTHORITY: KRS 13A.222(4)(e), 224.10-100

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 65.

Section 1. General definitions. As used in the Division for Air Quality regulations of 401 KAR Chapter 65, unless the content clearly indicates otherwise in a specific regulation, the following terms shall have the following meanings:

(1) "Air contaminant" has the meaning given it in KRS 224.01-010.

(2) "Air pollutant" means an air contaminant.

(3) "Air pollution" has the meaning given it in KRS 224.01-010.

(4) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(6) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(7) "Cabinet" has the meaning given it in KRS 224.01-010.

(8) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(9) "District" has the meaning given it in KRS 224.01-010.

(10) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the

cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(11) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(12) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(13) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(14) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(15) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(16) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(17) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(18) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(19) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(20) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(21) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(22) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(23) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(24) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the regulations of the Division for Air Quality.

(25) "Standard conditions."

(a) For source measurements means twenty (20) degrees Celsius (sixty- eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(26) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(27) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(28) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(29) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the regulations of the Division for Air Quality.

(30) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(31) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonates; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); trichlorotrifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet. Approval by the cabinet shall not constitute or imply approval by the U.S. EPA. The cabinet will not approve a test method that has been disapproved for use by the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

~~[Section 2. Abbreviations. The abbreviations used in the regulations of 401 KAR Chapter 65, shall have the following meanings:]~~

(32) "AOAC" **means** [-] Association of Official Analytical Chemists

(33) "ANSI" **means** [-] American National Standards Institute.

(34) "ASTM" **means** [-] American Society for Testing and Materials.

(35) "BOD" **means** [-] Biochemical oxidant demand.

(36) "BTU" **means** [-] British Thermal Unit.

(37) "°C" **means** [-] Degree Celsius (centigrade).

(38) "Cal" **means** [-] calorie.

(39) "cfm" **means** [-] cubic feet per minute.

(40) "CFR" **means** [-] Code of Federal Regulations.

(41) "CH_4" **means** [-] methane.

(42) "CO" **means** [-] Carbon monoxide.

(43) "CO_2" **means** [-] Carbon dioxide.

(44) "COD" **means** [-] Chemical oxidant demand.

(45) "dscf" **means** [-] dry cubic feet at standard conditions.

(46) "dscm" **means** [-] dry cubic meter at standard conditions.

(47) "°F" **means** [-] Degree Fahrenheit.

(48) "ft" **means** [-] feet.

(49) "g" **means** [-] gram.

(50) "gal" **means** [-] gallon.

(51) "gr" **means** [-] grain.

(52) "hr" means [-] hour.
(53) "HCl" means [-] Hydrochloric acid.
(54) "Hg" means [-] mercury.
(55) "HF" means [-] Hydrogen fluoride.
(56) "H_2O" means [-] water.
(57) "H_2S" means [-] Hydrogen sulfide.
(58) "H_2SO_4" means [-] Sulfuric acid.
(59) "in" means [-] inch.
(60) "J" means [-] joule.
(61) "KAR" means [-] Kentucky Administrative Regulations.
(62) "kg" means [-] kilogram.
(63) "KRS" means [-] Kentucky Revised Statutes.
(64) "l" means [-] liter.
(65) "lb" means [-] pound.
(66) "m" means [-] meter.
(67) "m^3" means [-] cubic meter.
(68) "min" means [-] minute.
(69) "mg" means [-] milligram.
(70) "MJ" means [-] megajoules.
(71) "MM" means [-] million.
(72) "mm" means [-] millimeter.
(73) "mo" means [-] month.
(74) "Ng" means [-] nanograms.
(75) "N_2" means [-] Nitrogen.
(76) "NO" means [-] Nitric oxide.
(77) "NO_2" means [-] Nitrogen dioxide.
(78) "NO_x" means [-] Nitrogen oxides.
(79) "oz" means [-] ounce.
(80) "O_2" means [-] oxygen.
(81) "O_3" means [-] ozone.
(82) "ppb" means [-] parts per billion.
(83) "ppm" means [-] parts per million.
(84) "ppm (w/w)" means [-] parts per million (weight by weight).
(85) "µg" means [-] microgram.
(86) "psia" means [-] pounds per square inch absolute.
(87) "psig" means [-] pounds per square inch gage.
(88) "S" means [-] at standard conditions.
(89) "sec" means [-] second.
(90) "SIP" means [-] State implementation plan.
(91) "SO_2" means [-] Sulfur dioxide.
(92) "sq" means [-] square.
(93) "TAPPI" means [-] Technical Association of the Pulp and Paper Industry.
(94) "TSP" means [-] Total suspended particulates.
(95) "TSS" means [-] Total suspended solids.
(96) "U.S. EPA" means [-] United States Environmental Protection Agency.
(97) "UTM" means [-] Universal Transverse Mercator.
(98) "VOC" means [-] Volatile organic compound.
(99) "yd" means [-] yard.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: July 15, 1993
FILED WITH LRC: July 15, 1993 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

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, July [~~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 biennial [~~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 (I/M) 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 biennial [~~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", **July [~~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 and based on the vehicle identification number, as described in Section 3(1)(a) of this administrative regulation. 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) Beginning two (2) years after [~~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 biennially for testing [~~annually~~] at a permitted inspection station located in the program area according to the following schedule based on the vehicle identification number:

1. A vehicle identification number (VIN) ending with an even number or any letter A-L shall be tested in even-numbered years; and

2. A VIN ending with an odd number or any letter M-Z shall be tested in odd-numbered years.

(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 (b) [~~(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 **150** [~~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 **150** [~~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 **150** [~~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 cabinet shall grant or deny a request within twenty (20) days of receipt of the request.** [~~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", **July** ~~[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;

4. [~~5.~~ Operator or passenger misconduct;

5. [~~6.~~] The vehicle tire cords are visible;

6. [~~7.~~] The vehicle has a space-saver spare tire mounted on the drive axle;

7. [~~8.~~] The vehicle is pulling a detachable trailer or load;

8. [~~9.~~] The vehicle stalls repeatedly;

9. [~~10.~~] The vehicle has leaking, defective, or detached exhaust systems;

10. [~~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

11. [~~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", **July** ~~[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", **July** ~~[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", **July** ~~[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", **July** ~~[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", **July** **[~~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.

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (As Amended)

415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY AND FUNCTION: KRS 224.60-130 requires the commission to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The commission shall not pay more than the following amounts for the performance of corrective action by certified contractors:

(a) Pavement removal and replacement not including labor costs:

Asphalt	
Removal[~~, per cubic yard~~ ~~$5.60~~] includes the cost of loading:	
1) asphalt pad, for each 3 inches of thickness, per square yard	$1.30 to $1.60
2) asphalt curbing, per linear foot	$1.25 to $1.55
Replacement[~~, per cubic yard~~ ~~$10.30~~]	
1) asphalt pad, for each 4 inches of thickness, per square yard	$2.70 to $3.30
2) asphalt curb and gutter, per linear foot	$3.50 to $4.40
Concrete	
Removal[~~, per cubic yard~~ ~~$11.75~~] - includes the cost of loading:	
1) concrete pad, per square yard	
4 inches thick	$1.70 to $2
6 inches thick	$3.25 to $3.95
9 inches thick	$8.20 to $10
10 inches or more thick	$26 to $31
with rebar	add 15%
2) concrete curbing, per linear foot	$4.50 to $5.50
Replacement[~~, per cubic yard~~ ~~$19.25~~]	
1) concrete, 4 inches thick, per square foot	$2 to $2.80
with rebar	add 15%
2) for each additional inch, per square foot	$0.20 to $0.30
Transportation of asphalt or concrete to disposal facility, [~~per mile,~~] per cubic yard, for each 20 miles - mileage must	[~~$0.14~~]

be documented; if closest disposal facility not used, reasonabless of cost must be justified	$6.60 to $8
Disposal fee, per cubic yard, not to exceed actual cost per unit	$12 to $25

(b) Excavation and disposal of contaminated soil, not including labor costs:

Excavation and stockpiling or loading directly to trucks, per cubic yard	$3.15 to $3.85 [2]
Install [~~Clean soil, backfill~~] and compact backfill, per cubic yard	$9 to $15
Transportation of contaminated soil to disposal facility, [~~per mile,~~] per cubic yard, for each 20 miles - mileage must be documented, if closest disposal facility not used, reasonabless of cost must be justified	$6.60 to $8 [~~$0.14~~]
Disposal fee, per cubic yard, not to exceed actual cost per unit	$12 to $25 [~~Actual cost~~]

(c) Treatment of soils or water, not including labor costs:

Pump and treat contaminated water and charcoal filtration, per 1,000 gallons	$0.25 to $2.50 [~~$0.50~~]
Operation of [~~packed tower~~] air stripper, per 1,000 gallons	$0.05 to $0.25
[~~hour~~	~~$1~~]
Treatment of contaminated soil by thermal desorber, [~~per ton~~	~~$25~~]
landfarming, [~~per ton~~	~~$25~~]
or other treatment of contaminated soil, per cubic yard, not to exceed actual cost per unit [~~ton~~]	$12 to $25
Disposal of contaminated water in waste-water treatment plan, per gallon, not to exceed actual cost per unit	$0.50 to $1.50

(d) Labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Carpenter	$25 to $35 [~~$30~~]
Cement finisher	$25 to $35 [~~$30~~]
Electrician	$25 to $30
Electrical contractor	$30 to $40 [~~$36~~]
Equipment operator	$20 to $30
Laborer	$15 to $20 [~~$26~~]
Master plumber	$30 to $40 [~~$36~~]
Journeyman plumber	$20 to $30
Apprentice plumber	$20 to $25

(e) Geologic and field services labor rates, per hour:

Labor rates include all fringes and benefits, and contractor's profits.

Certified contractor	$75 to $90
Professional engineer	$70 to $80 [~~$75~~]
Engineer-in-training	$45 to $55 [~~$50~~]
Geologist	$45 to $55 [~~$50~~]
Registered geologist	$70 to $80 [~~$75~~]
Draft person	$25 to $35
Environmental technician, trained in sample collection	$35 to $45
Environmental specialist, must have a bachelor of science degree in chemistry, biochemistry, biology, or soil science	$45 to $55
Secretarial	$15 to $20
Mileage, per mile for automobile, pickup truck or utility vehicle	$0.22
[~~Travel expenses and other reimbursables~~	~~Actual cost~~]
Overnight lodging - must be demonstrated to be necessary	$35 to $70
Meals - when overnight stay is necessary	
Breakfast	$4
Lunch $5	
Supper	$11
Long distance telephone calls	Actual cost
[~~Seismic exploration, per hour~~	~~$100~~
~~Resistivity survey, per hour~~	~~$100~~
~~Spontaneous potential survey, per hour~~	~~$100~~
~~Terrain conductivity meter (equipment charge),~~	
~~Per day~~	~~$200~~
~~Per week~~	~~$500~~]
Soil gas analysis for VOC (equipment charge), per day	$150

(f) Environmental exploration - does not include labor costs unless so stated:

Mobilization and demobilization of drilling equipment [~~to the site~~] (includes rig, two (2) man crew, and initial off-site steam cleaning):	
1) Auger rig, core rig, or wash rotary rig, per mile, minimum of $200	$2 to $3
2) Air rotary rig, per mile, minimum of $350	$3.50 to $4
[~~In town, lump sum~~	~~$350~~
~~Out of town - $5 per mile one way plus~~	~~$100~~]
Installation of monitoring well, 4 inch diameter per linear foot	$20 to $35 [~~$46~~]
Drilling (excluding monitoring well) per linear foot	$7 to $30 [~~$26~~]
For depths greater than 60 feet, add $2.40 per linear foot.	
Hourly services (rig and two (2) man crew)	
May include drilling, well installation, decontamination, well development, difficult moving, and delay (not related to weather or mechanical breakdown), per hour	$110 to $130 [~~$115~~]
[~~Additional crew member, per hour~~	~~$25~~
~~Additional crew member with pickup truck, per hour~~	~~$35~~]
Equipment	
Steam cleaner, per day	$50 to $75 [~~$60~~]
Self-contained steam cleaning unit, per day	$100 to $125 [~~$110~~]
Grout unit, per day	$45 to $75 [~~$60~~]
Water trailer (500 gal.), per day	$50 to $75
[~~Water truck (1000 gal.) with driver, per hour~~	~~$40~~]
Water truck (1000 gal.) [~~without driver~~], per day	$125 to $175 [~~$150~~]
Materials	
Well materials, decontamination supplies, health and safety supplies, grout, well casing and screen, filter pack, well	

covers, etc.	Actual cost+15%

(g) Sampling analysis, including labor to take sample, sampling materials, transportation of sample, and chain of custody:

Soil Sample	
BTEX (benzene, toluene, ethylbenzene, xylene)	$50 to $120
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	
Polynuclear Aromatic Hydrocarbons	$150 to $220
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	
Total recoverable oil and grease [~~Total Petroleum Hydrocarbons~~]	
Method SW 846 9071	$50 to $60
Lead	
Method SW 846 7421 or 6010	$25 to $45 [~~$30~~]
Water Samples	
BTEX (benzene, toluene, ethylbenzene, xylene)	$50 to $120
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	
Polynuclear Aromatic Hydrocarbons	$150 to $220
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	
Total recoverable oil and grease [~~Total Petroleum Hydrocarbons~~]	$30 to $60 ~~$60~~
Method SW 846 9070	
Total Lead	$30 to $60 [~~10~~]
Method SW 846 7421 or 6010	
Sludge and Cleaning Liquid Samples	
Toxicity Characteristic Leading Procedure for the parameters of metals, volatile organics, and Acid/Base/Neutral.	$650 to $750
If the parameter of Pesticides and Herbicides is required	$50
Ignitability	
SW846 Method 9095	$25 to $35
Paint Filter Test	
SW846 Method 1010	$15 to $30

(h) Legal Services

Attorney	
Sole practitioner, per hour	$40
Partner or principle in firm, per hour	$75
Associate in firm, per hour	$60
Paralegal, per hour	$30

(2) An amount in excess of the maximum amount set forth in subsection (1) may be approved by the commission if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

(3) At the first regular meeting of the commission in each calendar year, the commission shall appoint a committee to review the appropriateness of the range of amounts established by this administrative regulation. The committee shall consist of three (3) members of the commission and the executive director. The committee shall:

(a) Establish a mailing list of persons who want to comment on this issue;

(b) Solicit comments and information from interested persons and persons who contract to perform corrective action;

(c) Conduct a public hearing to receive comment on the cost of corrective action; and

(d) Submit a report to the commission by July 1 of each calendar year recommending changes or revisions to this administrative regulation.

Section 2. Range of Amounts To Be Paid For Items Not Listed In Section 1 of this Administrative Regulation. (1) Items not listed in Section 1 of this administrative regulation are subject to the following qualifications:

(a) Original invoices from manufacturers or retailers shall be supplied to the commission;

(b) Unlisted items shall be subject to a maximum reimbursable amount of fifteen (15) percent above cost, which includes rentals or purchases;

(c) No markups shall be allowed on any pass through costs such as utilities or employee expense accounts; and

(d) Out-of-state travel expenses, including but not limited to air fare, shall not be reimbursed unless demonstrated to be necessary for the performanace of corrective action (example: expertise not available within state);

(e) The cost is reasonable and necessary to the performance of corrective action.

(2) Costs for alternative corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems, shall be subject to the range of costs set forth in this section where appropriate. Additional costs associated with the technology shall be justified as to reasonableness and necessity.

(3) Costs of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. These costs shall be justified as to reasonableness and necessity.

Section 3. Eligibility Criteria for Persons Who Contract to Perform Corrective Action. To be eligible for payment from the fund, persons who contract to perform corrective action shall be certified according to 415 KAR 1:115 and shall provide a bid proposal to the owner or operator. The bid shall be submitted on the "Bid Proposal Form" [~~dated October~~ [August], 1993, ~~hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday~~].

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section 1 [2] of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by commission staff.

Section 4. Certification of Contractor Costs. (1)(a) The commission may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks.

(b) The commission shall establish the date by which the proposals **shall** [~~are to~~] be submitted **in its request for proposals**.

(2) The commission shall specify in the notice of the request for proposals the information to be submitted by the individual or company. The information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address,

and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, [~~then~~] a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, [~~then~~] the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals **shall** [~~are to~~] be submitted to the commission;

(3) The commission shall review all proposals received after the date established by the commission for submittal of proposals. Proposals are to be submitted for the purpose of assisting the commission in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the commission, since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) Commission staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the commission verifies that the individual or company complies with the requirements of subsection (4) of the section, [~~then~~] the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request.

(6) If the commission verifies a proposal, [~~then~~] the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the commission that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the commission by an owner or operator for the costs of corrective action performed by an approved contractor shall be reviewed by the commission staff to determine that the costs were necessary.

Section 5. **(1) "Bid Proposal Form (August, 1993)" is incorporated by reference.**

(2) This form may be obtained, inspected, or copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky, (502) 564-5981, 8 a.m. to 4:30 p.m., ET, Monday through Friday.

Section 6. The provisions of this regulation shall **be enforced beginning** [~~become effective~~] January 1, 1994.

JACK HALL, Executive Director
APPROVED BY AGENCY: October 7, 1993
FILED WITH LRC: October 7, 1993 at noon

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND COMMISSION (As Amended)

415 KAR 1:115. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130
STATUTORY AUTHORITY: KRS 224.60-130
NECESSITY AND FUNCTION: KRS 224.60-130 requires the Petroleum Storage Tank Environmental Assurance Fund Commission to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation sets forth the criteria for obtaining certification from the commission to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank, and to be eligible to receive reimbursement or payment from the fund. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action, and to determine financial capability through proof of insurance.

Section 1. Definitions. Except as defined in this section, the terms in this regulation shall have the same definition as in KRS 224.60-115 or 415 KAR 1:050.

(1) "Certified contractor" means an individual certified by the commission as qualified to engage in the performance or supervision of corrective action at a facility in the event of a release from a petroleum storage tank system.

(2) "Company" means a person other than an individual engaged in the business of performing corrective action for a release from a petroleum storage tank system who employs one (1) or more certified contractors.

(3) "Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 7 of this administrative regulation.

(4) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plan, and implementation of a corrective action plan approved by the cabinet.

(5) [~~(4)~~] "Supervise" means being physically on site and having the authority and responsibility for the performance of [~~direction of employees engaged in performing~~] corrective action at a facility in the event of a release from petroleum storage tank system, and having the ability to exercise independent judgement and direct the activities of employees and subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

Section 2. Applicability. (1) **Beginning January 1, 1994, costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if the corrective action is:**

(a) Performed or supervised by an individual who is certified by the commission; and

(b) Performed in compliance with 401 KAR Chapter 2. [~~Effective March~~ [January] 1, 1994, no costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund unless the corrective action is performed or

~~supervised by an individual who is certified by the commission, and the corrective action is performed in compliance with the administrative regulations of the cabinet set forth in 401 KAR Chapter 42. This requirement shall apply only to applications for assistance agreements made after March 1, 1994.~~

~~(2) The commission shall not reimburse costs of corrective action commenced [incurred] after March [January] 1, 1994, unless the corrective action is performed or supervised by an individual that has been certified pursuant to this administrative regulation.~~]

(2) [~~(3)~~] Certified contractors shall perform or supervise corrective action, **such as** [~~including but not limited to,~~] site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

(3) [~~(4)~~] To be eligible for reimbursement from the fund, the person who contracts to perform corrective action shall designate the certified contractor responsible for supervision of the corrective action prior to incurring costs by giving written notice to the owner or operator of the facility and the commission. If the certified contractor changes, a new notice shall be given.

(4) [~~(5)~~] A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 3. Application Requirements. (1) **An** [~~Each~~] applicant for certified contractor shall [~~meet all of the following requirements~~]:

(a) Submit an application to the commission on the Certified Contractor Application form [~~dated August, 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday~~];

(b) Submit verification of experience by participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system; and

(c) Complete the examination requirements of this administrative regulation[~~; and~~

~~(d) Provide proof of financial capability to perform corrective action and to compensate third parties for bodily injury and property damage caused by the certified contractor, or company employing the certified contractor, by submitting certificates of general liability insurance in the minimum amount of $1,000,000 and pollution liability insurance in the minimum amount of $100,000 per occurrence. The proof of financial capability shall be provided prior to the issuance of a certificate by the commission~~].

(2) **An** [~~The~~] application shall be denied by the commission **if the applicant** [~~for any of the following~~]:

(a) [~~The applicant~~] Fails to provide the information required by the application form; or

(b) [~~The applicant~~] Fails to comply with the experience requirements of this administrative regulation; or

(d) [~~The applicant~~] Fails to successfully pass the examination required by this administrative regulation; or

(e) [~~The applicant~~] Makes a misrepresentation or submits false information in the application[~~; or~~

~~(f) The applicant fails to provide proof of the insurance coverage required by this section~~].

Section 4. Experience Requirements. (1) **An applicant** [~~The individual making application~~] shall demonstrate participation in the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the commission shall reduce the experience requirement of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) A professional engineer registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) A certified professional geologist registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 5. Examination Requirements. **An** [~~Each~~] applicant for certified contractor shall take and pass a written examination administered by the commission in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of corrective action for a release from a petroleum storage tank system. The examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system, and with applicable occupational health and safety and public health and safety requirements.

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) Any applicant who fails the examination shall not reapply within ninety (90) days.

(4) Examinations shall be given quarterly through January 1, 1995, and semiannually thereafter.

(5) An application **to take the examination** shall be filed with the commission at least ten (10) days in advance of the testing date to take the examination.

(6) All examinations shall be graded and the applicants shall be notified within fifteen (15) days. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant by appointment.

(7) The commission shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 6. Certification and Renewal Procedures. (1) **A** [~~The~~] commission shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed annually.

(2) An application for renewal shall be submitted to the commission on the Certified Contractor Application for Renewal form [~~dated October~~ [August], 1993, hereby incorporated by reference. This form may be inspected and copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the commission are from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday].

(3) [~~A certified contractor shall submit proof of financial capability, as required by Section 3(1)(d) of this administrative regulation, at time of renewal, and shall demonstrate that the insurance coverage shall be effective for the following year.~~

~~(4)~~] The renewal of a certificate shall be denied by the commission **if an applicant** [~~for any of the following~~]:

(a) [~~The applicant~~] Fails to provide the information required by the "Certified Contractor Application for Renewal form".

(b) [~~The applicant~~] Makes a misrepresentation or submits false information in the application for renewal; or

(c) [~~The applicant fails to demonstrate the insurance coverage required by subsection (3) of this section; or~~

~~(d)~~] [~~The applicant~~] Failed to supervise a corrective action during the year prior to renewal; or

(d) [~~(e)~~] [~~The applicant~~] Fails to maintain a professional registration.

(4) An applicant denied a certification or a renewal may appeal the determination by requesting a hearing pursuant to 415 [~~405~~] KAR 1:120.

(5) The commission may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action since the date of original certification.

Section 7. Revocation or Suspension of Certification. A certificate issued pursuant to this regulation may be suspended or revoked by the commission **if the certified contractor** [~~for the following~~]:

(1) [~~The certified contractor~~] Negligently, incompetently, recklessly or intentionally violated any provision of this regulation or any required federal, state or local regulation, code or standard relating to corrective action; or

(2) [~~The certified contractor~~] Recklessly or intentionally caused or permitted a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet;

(3) [~~The certified contractor~~] Obtained the certification through fraud or misrepresentation;

(4) [~~The certified contractor~~] Fails to perform a corrective action in a manner consistent with generally acceptable professional standards.

(5) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120. [~~The certified contractor fails to maintain general liability insurance as required by Sections 3(1)(d) and 5(3) of this administrative regulation.~~]

Section 8. Interim Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the commission in writing of the extended absence of a certified contractor due to an emergency or unanticipated circumstances. The notice shall provide the commission with the following information:

(a) Name and qualifications of the individual replacing the certified contractor; and

(b) The length of time for which the company seeks to have the interim contractor fulfill the obligations of the certified contractor.

(2) The commission shall evaluate the qualifications of the designated interim operator and shall notify the company of the commission's determination in writing within fifteen (15) days of receipt of the company's notice. The determination shall:

(a) Approve or deny the company's request for designation of the interim contractor;

(b) Specify conditions as appropriate to the facility and the interim contractor's qualifications. [~~Nonaffiliation with Laboratory. The certified contractor, or company employing the certified contractor, and any of his or her subcontractors is prohibited from using a laboratory for environmental analytical work which is affiliated with the underground petroleum tank owner or operator, prime contractor, private contractor, or subcontractor for that particular site.~~]

Section 9. **(1) The following forms are incorporated by reference:**

(a) "Certified Contractor Application Form (August, 1993)"; and

(b) "Certified Contractor Application for Renewal Form (August, 1993)".

(2) These forms may be obtained, inspected, or copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leawood Drive, Frankfort, Kentucky, (502) 564-5981, 8 a.m. to 4:30 p.m., ET, Monday through Friday.

Section 10. The provisions of this administrative regulation shall **be enforced beginning** [~~become effective~~] January 1, 1994.

JACK HALL, Executive Director
APPROVED BY AGENCY: October 7, 1993
FILED WITH LRC: October 7, 1993 at noon

COMPILER'S NOTE: The following administrative regulation, 750 KAR 2:010, was amended by the Interim Joint Committee on Education and the promulgating agency, and became effective on November 4, 1993.

SCHOOL FACILITIES CONSTRUCTION COMMISSION
(As Amended)

750 KAR 2:010. Education technology funding program guidelines.

RELATES TO: KRS Chapter 157
STATUTORY AUTHORITY: KRS 157.650-157.665
NECESSITY AND FUNCTION: The School Facilities Construction Commission is to promote a partnership between the state and local public school districts to help meet the educational technology needs of Kentucky's students. The General Assembly has appropriated funds for administrative support and for offers of assistance to local public school districts. This administrative regulation describes procedures and the guidelines the School Facilities Construction Commission will utilize in determining the eligibility and level of participation for each local public school district, for making offers of assistance to school districts, for verifying local public school district funding matches, and for the accumulation of credits by local public school districts that maintain their eligibility.

[~~Section 1. Eligibility. (1) The School Facilities Construction Commission (the "Commission") shall use the statement of need as certified by the State Board for Elementary and Secondary Education (the "State Board") in determining eligibility and the required rate of participation for each local public school district.~~

~~(2) All local public school districts shall have an approved technology plan by July 1, 1993. Each district's plan shall contain a description of unmet technology needs of the district.~~]

[~~Section 2. Rate of Participation. The rate of state participation shall be certified by the state board to the commission. State funds shall be transferred to the local districts based upon a certification and approval of the commission, subject to the approval of the Secretary of Finance and Administration. The amount of assistance available for each local school public district shall be determined by the formula contained in KRS 157.660(1).~~]

Section 1. [~~3.~~] Sources of Local Matching Funds. Local public school districts may match the state offer of assistance from their general fund; from the proceeds of revenue bonds or notes issued on behalf of a district to purchase technology equipment supported by the district's general fund and which are to be retired within three (3) years from the date of issuance; vendor or third party lender leases; from grants from private sources, or from interest earned by a district on any school building construction account, provided that such interest is not already committed for expenditure on the construction project.

Section 2. [~~4.~~] Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to local school districts for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by Section 2 of this administrative regulation. Subject to approval by the Secretary of the Finance and Administration Cabinet, approximately one-half (1/2) of available funds shall be allocated to local school districts each year during the 1992-94 biennium.

(2) Upon certification of the rate of participation to the commis-

sion, the commission's executive director shall notify each eligible district in writing of the amount the district is entitled to receive, and the conditions the district must meet, if it accepts the offer of assistance. Conditions districts must meet to be eligible for assistance are: the district has an unmet technology need as defined in KRS 157.615(15), or an obligation to pay for technology acquired before April 3 [2], 1992; commitment by the district of local school funds equal to the amount of state assistance available to the district under the formula in KRS 157.660(1); and except as provided by KRS 157.-655(2), during the 1992-94 biennium, expenditure of state and local technology funds in the priority order listed in the district's technology plan as approved by the state board; and, the sequence of events and deadlines to be met by the local school district in fulfilling its educational technology needs.

Section 3. [5.] Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer that the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistributed to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance may be granted by the executive director.

(2) Local school district shall provide to the commission copies of their boards' minutes reflecting acceptance of offers of assistance. Except as provided in subsection (3) of this section, upon acceptance of offers of assistance, each local school district shall establish in the district's depository bank an "Education Technology Matching Funds Restricted Account", which shall bear interest on the balances in the account. All interest received on the accounts shall be applied to meet educational technology needs in the school district. The districts shall provide the commission with a copy of a bank deposit ticket verifying deposit of the local matching funds in the account.

(3) If a district receives a grant or grants from private sources to serve as the local matching funds, and as a condition of the grant the grant funds are deposited in a trust or similar bank account, the district may submit to the commission a copy of a bank statement showing that the local matching funds are available for expenditure from such account, in lieu of opening an Education Technology Restricted Fund Account.

Section 4. [6.] Bond Issuance Procedures. The commission shall provide technical advice with reference to the issuance of bonds, or entering into lease agreements to meet district technology needs, to all local school districts who request such advice.

JOE WALTERS, Chairman
APPROVED BY AGENCY: August 12, 1993
FILED WITH LRC: August 13, 1993 at 9 a.m.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

KENTUCKY RIVER AUTHORITY
(Amended After Hearing)

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 **ten (10)** ~~[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.

(54) [~~(55)~~] "Watershed" means all the area from which all drainage passes a given point downstream.

(55) [~~(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.

(56) [~~(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: November 9, 1993
FILED WITH LRC: November 9, 1993 at 11 a.m.

KENTUCKY RIVER AUTHORITY
(Amended After Hearing)

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. **The authority may require a check to be certified if any previous check to the authority has been returned for insufficient funds.**

(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: November 9, 1993
FILED WITH LRC: November 9, 1993 at 11 a.m.

KENTUCKY RIVER AUTHORITY
(Amended After Hearing)

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 accordance 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. **The authority may require a check to be certified if a previous check to the authority was returned for insufficient funds.**

(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: November 9, 1993
FILED WITH LRC: November 9, 1993 at 11 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Amended After Hearing)

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 **administrative** regulation is necessary to comply with these statutory requirements.

Section 1. **Definitions. (1) "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.**

(2) "Immediate family" means a spouse, parent or child.

(3) "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.

(4) "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.

(5) "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.

(6) "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.

(7) "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee.

(8) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(9) "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.

(10) "Spouse" means a husband or wife.

Section 2. 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 **3.** **[~~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 **4.** **[~~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 5. [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 **6.** [~~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:~~]

(1) ~~[(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.

(2) ~~[(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.

(3) ~~[(4)]~~ ~~[2.]~~ The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(4) ~~[(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.

(5) ~~[(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.

(6) ~~[(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.

(7) ~~[(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.

(8) ~~[(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.

(9) ~~[(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.

(10) ~~[(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.

(11) ~~[(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.~~]

(12) ~~[(13)]~~ Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(13) ~~[(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.

(14) ~~[(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 **first day sick leave would have been granted** ~~[date the request was submitted]~~ and the date of approval by the appointing authority.

(15) ~~[(16)]~~ The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(16) ~~[(17)]~~ Donated sick leave shall be used on consecutive days except as provided by Section 5 **[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.

(17) ~~[(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 **or a member of his immediate family** will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(18) ~~[(19)]~~ If a sick leave donor resigns, retires or is otherwise terminated from state employment before the **donor's sick leave has been transferred** ~~[process of transferring leave]~~ to the recipient ~~[has begun]~~, such leave shall not be available for use by the recipient.

(19) ~~[(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 7. ~~[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.~~]

(1) [~~(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.

(2) [~~(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.

(3) [~~(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.

(4) [~~(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.

(5) [~~(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.

(6) [~~(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.

(7) [~~(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.

(8) [~~(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 8. [~~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 9. [~~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 10. [~~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 11. [~~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 12. [~~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: November 8, 1993
FILED WITH LRC: November 10, 1993 at 11 a.m.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Amended After Hearing)

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 comprehensive 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 **administrative** regulation is necessary to comply with these statutory requirements.

Section 1. **Definitions. (1) "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.**

(2) "Immediate family" means a spouse, parent or child.

(3) "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.

(4) "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.

(5) "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.

(6) "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.

(7) "Parent" means the biological parent of one (1) employee or an individual who stood in loco parentis to an employee.

(8) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

(9) "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.

(10) "Spouse" means a husband or wife.

Section 2. 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 **3.** [~~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 **4.** [~~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 5. [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 **6.** **[~~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:~~]

(1) [~~(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.

(2) [~~(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.

(3) [~~(4)~~] **[~~2.~~]** The donating employee shall retain a sick leave balance of not less than seventy-five (75) hours.

(4) [~~(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.

(5) [~~(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.

(6) [~~(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.

(7) [~~(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.

(8) [~~(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.

(9) [~~(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.

(10) [(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.

(11) [(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.]

(12) [(13)] Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(13) [(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.

(14) [(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 **first day sick leave would have been granted** [date the request was submitted] and the date of approval by the appointing authority.

(15) [(16)] The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(16) [(17)] Donated sick leave shall be used on consecutive days except as provided by Section 5 [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.

(17) [(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 **or a member of his immediate family** will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(18) [(19)] If a sick leave donor resigns, retires or is otherwise terminated from state employment before the **donor's sick leave has been transferred** [process of transferring leave] to the recipient [has begun], such leave shall not be available for use by the recipient.

(19) [(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 7. [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.

(2) [(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.

(3) [(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.

(4) [(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.

(5) [(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.

(6) [~~(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.

(7) [~~(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.

(8) [~~(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 **8.** [~~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 **9.** [~~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 **10.** [~~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 **11.** [~~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 **12.** ~~[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: November 8, 1993
FILED WITH LRC: November 10, 1993 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Kentucky Health Care Data Commission
(Amended After Hearing)

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 **administrative** 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 **administrative** 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. **Inpatient episodes of long-term care provided in designated or licensed swing, dual licensed, nursing facility, skilled, intermediate or personal care beds are not included in this definition.**

(2) "Encounter" means each instance of ambulatory care and services provided for an ambulatory patient of a hospital or an ambulatory facility. **An encounter does not include lab work, screening services, employment physicals and employer drug screenings, services to schools, outpatient prescriptions, health fairs and other services rendered to any person not registered as a patient with the hospital or ambulatory facility, or services rendered to persons which do not involve a face-to-face encounter with the patient and for which the hospital or ambulatory facility does not prepare an individual patient bill using the UB-82, UB-92 or HCFA-1500 forms.**

(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 **a** [~~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, **or UB-92 as applicable to payor billed,** and shall submit a copy of every HCFA 1500 record **or UB-92 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 **a** [~~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 **July 1, 1994** [~~January 1, 1994~~], the commission may require **providers** [~~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 **scheduled to be completed by March 31, 1994.** [~~from October 1 through December 31, 1993 as scheduled by the committee.~~]

(5) Mode of transmission of records.

(a) Providers with capability to **submit** [~~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**. If the submission is quarterly, it shall be** 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.

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

(b) Electronically submitted data shall be certified by a letter mailed within two (2) working days of the date of the electronic transmission, stating the date of the electronic transmission and otherwise meeting the certification provisions of paragraph (a) of this subsection.

Section 3. **Finalization of Records. (1) For all inpatient discharges and ambulatory encounters occurring on and after July 1, 1994, UB-82, UB-92 and HCFA-1500 records generated by hospitals and ambulatory facilities shall be considered sufficiently final for submission to the commission no later than sixty (60) days after the date of discharge or encounter, and every data field required by Section 6 of this administrative regulation shall contain an applicable code when the record is submitted. This provision shall not be construed to imply that many records may not be in fact finalized in less than the sixty (60) days, nor shall it preclude the further finalization of a record that is coincidentally held longer than the sixty (60) days before being included in a quarterly or other submission to the commission.** [~~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) **Frequency for submitting final records. At the provider's option, final records shall be submitted either not less than once for each calendar quarter, or they may be submitted more often at any interval which the provider finds convenient for accumulating final records and submitting them as a batch. If the option chosen is to submit data only once for a quarter, then the submission shall occur no later than fifteen (15) days after the last day of the quarter and shall consist of all records that became final during the quarter as provided in Section 3(1) of this administrative regulation. Regardless of the option chosen, all records which became final during a quarter shall have been submitted no later than fifteen (15) days following the end of that quarter.** [~~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 **thirty (30)** [~~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 **thirty (30)** [~~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 **thirty (30)** [~~twenty (20)~~] days.

(d) Corrected records shall be fully completed as provided in Section 2(1) and (2) of this administrative regulation. **Except where Social Security numbers cannot be obtained, providers shall include Social Security numbers on incoming correction records to enable the commission to generate the unique record identifier provided for in Section 5 of this administrative regulation in order to match corrected records with their respective originals previously received.**

(e) All records received by the commission will be edited after their receipt to ensure completeness and validity of the data for further processing. Computer editing routines will be programmed to flag, as requiring correction, any record in which the required data fields are left blank, contain invalid codes, or otherwise fail to pass editing parameters of the commission.

(f) A provider shall initiate, as a correction, a resubmission

of a record previously submitted to the commission if, during six (6) calendar months after the original submission date, the provider makes one (1) or more specified changes to the record as follows:

1. Changes which constitute an aggregate change of the originally submitted total charge by at least three (3) percent or $500, whichever is greater, if a hospitalization; or ten (10) percent if an ambulatory encounter; or

2. Changes which reflect any change of or addition to primary or secondary diagnoses or procedures, or other additions or changes of any nature involving comorbidities, complications, nosocomial infections or readmissions.

3. These requirements shall apply to all records which, although not necessarily complete in all respects, were considered "final" and were submitted pursuant to Section 3(1) of this administrative regulation. Changes made more than six (6) months after the original submission are not required to be submitted.

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) **UB-82 and UB-92** ~~[Hospital]~~ records. Hospitals **and ambulatory facilities** shall ensure that each **UB-82 and UB-92** 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.

UB-82 Form Locator #	UB-92 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.

UB 82 Form Locator #	UB 92 Form Locator #	Data Element Label	Special Coding Instructions/Requirements
11	**13**	**Patient Address**	**Along with the patient's address, ensure that an accurate zip code is recorded. If the patient's address, thus zip code, is unknown, enter "99999". If the patient resides outside the United States, enter "00000".**
92	82	Attending Physician ID	Line 1: **Uniform Physician Identification Number (UPIN) assigned by HCFA** ~~[License No. assigned by Ky. Board of Medical Licensure]~~
93	83	Other Physician ID	Line 1: **Uniform Physician Identification Number (UPIN) assigned by HCFA** ~~[License No. Assigned by Ky. Board of Medical Licensure]~~

(c) New data elements.

New Data Element Label	Reserved Field # on Form UB-82	Reserved Field # on Form UB-92	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 **U: Unknown**
Social Security #	2	2	Line 2**: Code Structure: (No hyphens)** **000000000: Non-U.S. resident** **999999999: Unknown U.S. resident** **For patients identified as newborns in Form Locator 20, enter mother's SSN followed by "N1" for single birth and consecutive number "N2", "N3", etc. for multiple births**
Birth Weight	9	11	Report birth weight in grams **or pounds and ounces (specify units** for those patients identified as "newborns" in Form Locator 20 "Source of Admission"
Unusual Occurrence - Readmission	27	78	Readmission to the 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) **HCFA 1500** **[**~~Ambulatory facility~~**]** records. **Hospitals and** ambulatory facilities shall ensure that each **HCFA-1500** 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~~**]**

(a) Existing data elements and coding instructions.

Item#	Data Element	Special Coding Instructions
1	Payor Type	Check all boxes that apply.
3	Patient's Date of Birth	Enter the patient's date of birth.
3	Gender	Enter the patient's gender.
5	Patient's Address (include zip code)	Along with the patient's address, ensure that an accurate zip code is recorded. If the patient's address, thus zip code, is unknown, enter "99999". If the patient resides outside the United States, enter "00000".
8	Patient Status	Check the appropriate box for the patient's marital status and whether employed or a

		student.
10A,B,C	Is condition related to employment, auto accident or other accident?	If the patient's condition is related to employment, auto accident, or other accident, check the "yes" block. Otherwise, check "no".
18	Hospitalization dates related to current services, if applicable.	Complete this item when a medical service is furnished as a result of, or subsequent to, a related hospitalization.
21	Diagnosis or nature of illness or injury, all that apply	Enter the required appropriate ICD-9-CM diagnosis code as the diagnosis code appears in the ICD-9-CM (International Classification of Diseases) book. You may enter up to four (4) diagnosis codes.
24A	Dates of Service	Enter the month, day and year for each procedure, service or supply. When "from" and "to" dates are shown for a series of identical services, enter the number of days or units in column G.
24D	Procedures, Services, Supplies	Enter the procedures, services or supplies using the HCFA Common Procedure Coding System (HCPCS). When applicable, show CHPCS modifiers with the HCPCS.
24F	Charges	Enter the charge for each listed service.
25	Federal Tax ID#	Enter your physician/supplier Federal Tax ID (Employer Identification Number).
28	Total Charge	Enter the total of all individual charges entered in column 24F. Total each claim separately.
31	Signature of Physician or Supplier including degrees or credentials.	Uniform Physician Identification Number (UPIN) assigned by HCFA.

(b) [~~(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 **U: Unknown** (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)~~]). **Code Structure: (no hyphens)** **000000000: Non-US resident** **999999999: Unknown US resident**

Section 7. Noncompliance and Penalties. (1) A hospital or ambulatory facility found by the commission to be in noncompliance with the provisions of this **administrative** 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 **data elements** [~~records~~] found to be deficient does not exceed one (1) percent of the total number of **data elements** [~~records~~] required to be submitted. **The one (1) percent error threshold shall be calculated as follows:** [~~within a reporting period.~~]

1. A record shall be counted as deficient if it lacks an applicable coded entry in any of the following fields and if, after opportunity for correction has been afforded, any of these fields still lack an applicable coded entry: UB-92 form locators 2 (line 1), 2 (line 2), 4, 5, 6, 8, 11, 13, 14, 15, 17, 19, 20, 22, 47, 48, 50, 64, 67, 76, 79 and 82, or the corresponding data elements on the UB-82 form.

2. A record shall be counted as deficient if it lacks an applicable coded entry in any of the following fields and if, after opportunity for correction has been afforded, any of these fields still lack an applicable coded entry: HCFA-1500 item numbers 1, 3 (date of birth), 3 (gender), 5, 8, 18, 19 (race), 19 (Social Security number), 21, 24A, 24D, 24F, 25, 28 and 31.

3. In determining the one (1) percent error threshold for deficient records under Section 7 of this administrative regulation, records containing unobtainable data codes in UB-92 Form Locator fields 2 (line 1), 2 (line 2), 13, 16 or 64, or the corresponding data elements on the UB-82 form, shall not be held deficient. For each instance of data submission to the commission, the level of deficiency shall be computed by dividing the number of required data elements that fail to pass the commission's edits for completeness and logical validity by the total number of required data elements contained in the entire submission, where "total number" means the number of required data elements per record times the number of records submitted.

4. In determining the one (1) percent error threshold for deficient records under Section 7 of this administrative regulation, records containing unobtainable data codes in HCFA-1500 fields 5, 19 (race) or 19 (Social Security number) shall not be held deficient. For each instance of data submission to the commission, the level of deficiency shall be computed by dividing the number of required data elements that fail to pass the commission's edits for completeness and logical validity by the total number of required data elements contained in the entire submission, where "total number" means the number of required data elements per record times the number of records submitted.

(2) Upon a finding of noncompliance, the commission shall file a report of **data reporting deficiencies** [~~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 manuals 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
GREG LAWTHER, Acting Executive Director
APPROVED BY AGENCY: November 3, 1993
FILED WITH LRC: November 4, 1993 at 2 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 15, 1993

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110, 18A.120
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.040, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with the provisions of KRS Chapter 18A, which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the commissioner. This regulation is necessary to comply with these statutory requirements.

Section 1. Notification of Register Vacancies. It shall be the duty of the appointing authorities to notify the commissioner as far in advance as possible of vacancies in full-time or part-time classified positions which may occur in the agencies.

Section 2. Use of Related Registers. The commissioner shall select registers from job classifications for which the minimum qualifications are comparable to or higher than those required for the job classification in which the vacancy exists. The commissioner may, if appropriate, rerate training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. When a register becomes so depleted that the preparation of usable certificates for a major portion of the imminent vacancies of the job classification is impracticable, the register shall be considered exhausted. The register which has become exhausted shall be considered expired upon the administration of a superseding examination and the establishment of a register on the basis of that examination. When a register becomes exhausted, the commissioner shall send to each eligible remaining on such register a notification prior to the administration of a superseding examination.

Section 4. Replenishment of Registers. If the commissioner determines that a register, although not exhausted, is inadequate for the filling of anticipated vacancies, he may announce an open competitive examination for the purpose of replenishing such register.

Section 5. Internal Mobility Program. There is established an internal mobility program to facilitate the movement of classified employees to positions in different classes in the state personnel system.

(1) The commissioner shall maintain full-time and part-time registers which, in addition to the names of eligibles for reemployment and appointment, (as provided by 101 KAR 2:066) shall consist of the names of interested employees with status who seek promotion, demotion, or transfer to a position of a different class and who meet the minimum requirements and pass the appropriate selection method.

(2) An employee with status interested in internal mobility shall submit a completed application to the Department of Personnel and request placement on the register. Such employee shall also be required to pass the appropriate examination or selection method before being placed on the register for any job classification outside of their present classification series. [~~Promotional Register. At the request of the appointing authority, the commissioner shall prepare a register of status employees interested in promotion to a full-time or part-time classified position who meet the minimum requirements and has obtained a passing grade on the competitive promotional examination. The names of such employees shall be placed on the register in the order of their final ratings, starting with the highest. The register shall be certified to agencies for their consideration in filling vacancies from a promotional register.~~]

Section 6. [~~Full-time or Part-time~~] Reemployment Registers. The commissioner shall prepare reemployment registers. Reemployment registers shall contain the names of former employees who are exercising their reemployment rights and current employees in the Internal Mobility Program for the classification.

Section 7. Full-time or Part-time Registers. The commissioner shall maintain separate registers for full-time and part-time positions. An eligible shall notify the department if he wants to be on the register for full time, part time or both.

Section 8. Maximum Number of Classifications. Except for those individuals exercising reemployment rights no person shall be eligible to have his name placed on the register for more than fifteen (15) individual job classifications at any specific time.

LOWELL W. CLARK, Commissioner
APPROVED BY AGENCY: November 15, 1993
FILED WITH LRC: November 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, December 22, 1993, at 9:30 a.m. in Room 392 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 204, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers
(1) Type and number of entities affected: This regulation could potentially affect approximately 32,521 employees in the classified service of state government and all appointing authorities in the executive department subject to KRS Chapter 18A.
(a) Direct and indirect costs or savings to those affected:
1. First year: $50,000
2. Continuing costs or savings: $50,000 per year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The department anticipates an increase in the applications it receives, the testing it conducts and the registers it processes.
(2) Effects on the promulgating administrative body: The Department of Personnel anticipates an increase in its testing and register services as the Internal Mobility Program is made operational.

(a) Direct and indirect costs or savings: An indirect savings to the agencies and the Personnel Board may be realized by reducing the amount of grievances and appeals that are currently filed by employees who believe that they were not given fair consideration for promotional opportunities. There are not fees or costs associated with the application process.

1. First year: $50,000

2. Continuing costs or savings: $50,000 per year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The names of employees interested in seeking promotion, demotion or transfer to a position of a different class and who meet the minimum requirements and pass the appropriate selection method shall be included with the names of applicants and eligibles for appointment or reemployment on registers certified to the agencies where the agency wishes to fill a vacant position by means other than lateral transfer, reinstatement, reversion or demotion.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The goal of this program is to enhance fairness in opportunity for employees wishing to compete for positions. A major consideration in developing this program was to maintain the ability of agencies to fill vacant positions quickly to retain their ability to provide continuity of services to the public. A proposal for posting all vacant positions throughout all state government offices was rejected as too time consuming.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. The department believes that this regulation complements the fair competition requirements and purposes of the Intergovernmental Personnel Act and KRS 18A.010.

(a) Necessity of proposed regulation if in conflict: No conflict is believed to exist.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. This amendment applies only to current employees with status in the classified service of the executive branch of state government who are governed by KRS Chapter 18A.

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). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CFR Par 825).

2. State compliance standards. The purpose of this amendment 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 recognizes 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.

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:066. Certification and selection of eligibles for appointment.

RELATES TO: KRS 18A.030, 18A.110, 18A.165

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapter 18A, which govern the establishment of eligible lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the exam. This regulation is necessary to comply with these statutory requirements.

Section 1. Request for Certification of Eligibles. To fill a vacant position in the classified service, not otherwise filled by lateral transfer, reinstatement, reversion or demotion [~~vacancy by selection of an eligible from a register established on the basis of an open competitive examination,~~] the appointing authority shall submit a request for register certification to the commissioner upon a prescribed form. This requisition may be for one (1) or more positions in the same class, in the same county, and shall indicate the number and identity of positions to be filled and the title of the job classification in which they have been allocated and specify all other pertinent information which the appointing authority and the commissioner deem necessary. The appointing authority shall make such request as far in advance as possible of the date the employee is to begin work.

Section 2. Certification of Eligibles. Upon receipt of a requisition, the commissioner shall certify and submit in writing to the appointing authority the names of available persons eligible for the position [~~appointment~~]. If one (1) position is involved, he shall certify and submit from the register for that job classification the names of the applicants [~~persons~~] whose scores are included in the highest five (5) scores earned on the examination, and the names of all internal mobility candidates [~~providing the commissioner shall fix a reasonable maximum number of eligibles certified~~]. If more than one (1) vacancy is involved, [~~either in one (1) or more agencies,~~] the commissioner may [~~shall~~] certify sufficient additional scores [~~names~~] for the agencies' consideration in filling the total number of vacancies by procedures to retain orderly consideration of eligibles; however, each appointment must be made from the internal mobility candidate listing or the eligibles with the five (5) highest scores. Scores shall be considered in whole numbers. [~~If the register, established as a result of the open competitive examination for a specific class, is exhausted, the commissioner shall certify and submit names in accordance with the above procedure.~~] The life of a certificate during which action may be taken shall be forty-five (45) days from the date of issue unless otherwise specified on the certification. Any appointment made from such certificate during that time shall not be subject to any change in the condition of the register taking place during that period.

Section 3. Availability. An eligible may at any time during the life of a register have himself listed as available or not available for appointment to a position of that job classification in any county or counties in the state by filing notice to such effect with the commissioner.

Section 4. Selective Certification. (1) The appointing authority shall specify in writing requirements of particular experience, education, or skill when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the particular experience, education, or skill essential for successful performance he may certify in order of rank on the register the names of those persons who possess those qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The appointing authority shall specify in writing exceptional requirements of particular characteristics when he deems such requirements necessary for a position. If, after investigation of the duties and responsibilities of the position, the commissioner finds the exceptional requirement of the characteristic essential for successful performance, he may certify in order of rank on the register the names of those persons who possess the qualifications specified. If, in certifying the names of such eligibles, the commissioner finds there are fewer than five (5) such eligibles, he shall complete the certificate by adding, after the names of such eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(3) The commissioner shall transmit a copy of all requests for selective certification to the Personnel Board upon approval of the request.

Section 5. Selection. The final selection by the appointing authority shall be reported in writing to the commissioner. At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the commissioner the nonavailability of any eligibles passed over for that reason.

Section 6. [~~Certification from the Promotional Register. Whenever a vacancy is to be filled from a promotional register established as a result of a competitive examination, the commissioner shall certify the names of eligibles in accordance with 101 KAR 2:056, Section 5.~~

~~Section 7.~~] Certification of Names from the Reemployment Register. Whenever a vacancy is to be filled from a reemployment register, the commissioner shall certify the names of eligibles.

LOWELL W. CLARK, Commissioner

APPROVED BY AGENCY: November 15, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, December 22, 1993, at 9:30 a.m. in Room 392 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 204, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: This regulation could potentially affect approximately 32,521 employees in the classified service of state government and all appointing authorities in the executive department subject to KRS Chapter 18A.

(a) Direct and indirect costs or savings to those affected:

1. First year: $50,000
2. Continuing costs or savings: $50,000 per year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The department anticipates an increase in the applications it receives, the testing it conducts and the registers it processes.

(2) Effects on the promulgating administrative body: The Department of Personnel anticipates an increase in its testing and register services as the Internal Mobility Program is made operational.

(a) Direct and indirect costs or savings: An indirect savings to the agencies and the Personnel Board may be realized by reducing the amount of grievances and appeals that are currently filed by employees who believe that they were not given fair consideration for promotional opportunities. There are not fees or costs associated with the application process.

1. First year: $50,000
2. Continuing costs or savings: $50,000 per year.
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The names of employees interested in seeking promotion, demotion or transfer to a position of a different class and who meet the minimum requirements and pass the appropriate selection method shall be included with the names of applicants and eligibles for appointment or reemployment on registers certified to the agencies where the agency wishes to fill a vacant position by means other than lateral transfer, reinstatement, reversion or demotion.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The goal of this program is to enhance fairness in opportunity for employees wishing to compete for positions. A major

consideration in developing this program was to maintain the ability of agencies to fill vacant positions quickly to retain their ability to provide continuity of services to the public. A proposal for posting all vacant positions throughout all state government offices was rejected as too time consuming.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None. The department believes that this regulation complements the fair competition requirements and purposes of the Intergovernmental Personnel Act and KRS 18A.010.

(a) Necessity of proposed regulation if in conflict: No conflict is believed to exist.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. This amendment applies only to current employees with status in the classified service of the executive branch of state government who are governed by KRS Chapter 18A.

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). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CFR Par 825).

2. State compliance standards. The purpose of this amendment 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 recognizes 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:010. Definitions.

RELATES TO: KRS 334.010, 334.020, 334.040, 334.050(9), 334.100, 334.190

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: In order to regulate the practice of selling and fitting hearing instruments, it is necessary to define terms related to the practice of fitting and selling hearing instruments. This administrative regulation establishes those terms and their definitions. [~~aids and the regulation of such by the Board for Licensing Hearing Aid Dealers.~~]

Section 1. In addition to the definitions in KRS 334.010, and, unless the context otherwise requires:

(1) "The time the buyer assumes any financial obligation with respect to the purchase" shall be deemed to be the moment when the buyer authorizes the purchase of the hearing instrument. [~~Fitter" means one who performs the testing and measurement of human hearing by means of an audiometer or other means devised for purposes of making, selecting and adapting of hearing aids to compensate for hearing loss or defects; the making of ear mold impressions; the physical acts of adjusting the hearing aid to the individual; the taking and interpreting of audiograms; as well as counseling, advising and assisting the purchaser of the selection of a suitable aid. It shall not include the one who dispenses such accessories as cords, batteries, standard ear plugs or similar items.~~]

(2) "Place of business" means an established address [~~at a fixed location where goods or services are offered or exhibited for sale and~~] where the client may [~~can~~] have personal contact and counsel with the fitter [~~and/~~]or seller of hearing instruments [~~aids~~] and obtain service during normal business hours.

(3) "Selling price" shall be the gross purchase price of the hearing instrument or instruments less any discounts granted. [~~Citizen resident" means an individual, who has a legal residence within the Commonwealth of Kentucky which is his official address as used on personal, federal or state income tax returns or a voting residence address.~~

~~(4) "Dealer" means any individual who fits and sells hearing aids or who is the owner of any business which employs one (1) or more employees and/or a partner in any partnership and/or a stockholder in any corporation which dispenses or sells hearing aid instruments and who individual holds a license from this board.~~]

STEVE BARLOW, Board Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at

the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: 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 licensed specialists in hearing instruments.

(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: Definition of terms used.

(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 administrative 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:020. Educational and health qualifications of applicants.

RELATES TO: KRS 334.050, 334.080, 334.090, 334.160(3)

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to delineate and clarify the procedures required of all applicants and to specify the requirements of compliance with the educational and health qualifications of applicants.

Section 1. Applications. The following principles and procedures shall govern all applicants:

(1) Applications shall be made directly to the board [~~office on forms supplied by the board~~] and shall be accompanied by [~~a recent photograph of the applicant and payment of~~] the required fee.

(2) Fees required with applications are application fees and are not refundable.

(3) In determining an applicant's fitness and qualifications, the board may require:

(a) Letters of reference;

(b) A physician's statement that the applicant is free of infectious or contagious disease;

(c) Verification of age; or

(d) Other supporting information or documents. [~~The board may require letters of reference, physician's statement that applicant is free of infectious or contagious disease, verification of age or other supporting information or documents as may be required or necessary in determining an applicant's fitness and qualification.~~]

Section 2. Health Requirements. Affliction with a contagious or infectious disease, which renders the practice of fitting hearing instruments [~~aids~~] by the licensee, apprentice [~~trainee~~] or applicant dangerous to the public health or safety shall be cause for denial, nonrenewal, suspension or revocation of an apprentice permit or [~~,~~] license [~~or certificate of endorsement~~].

Section 3. Request for Hearing. The board shall hold a hearing upon request of any person directly affected by the board's decision to deny an application for licensure or a apprentice [~~trainee~~] permit.

STEVE BARLOW, Board Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: 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 applicants to be licensed specialists in hearing instruments.

(a) Direct and indirect costs or savings to those affected: Application fees must be paid.

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: Sets forth the application procedures.

(2) Effects on the promulgating administrative body: Sets forth the application procedures.

(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: Sets forth the application procedures.

(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 administrative 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:040. Examinations [~~and grading~~].

RELATES TO: KRS 334.060, 334.070, 334.080, 334.090, 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to clarify and delineate the procedures[~~, times, and places~~] for administering [~~and grading of applicants~~] examinations.

Section 1. The board or its designee shall [~~will~~] administer a qualifying examination[~~, prepared, graded and classified by the board,~~] to all qualifying applicants in accordance with the following rules:

(1) Applicants for examination shall furnish two (2) forms of identification, one (1) of which contains a picture, before being allowed to sit for the examination. [~~Examinations shall be conducted in such manner that the result shall be entirely fair and impartial, the applicants being known by numbers only, so that no member of the board shall be able to identify the written examination of any applicant until it has been graded. All applicants examined at the same time shall have the same written questions asked them.~~]

(2) The examination shall consist of the following:

(a) The National Examination in Hearing instrument studies;

(b) Sstate written examinations on laws and ethics, ear molds and acoustics; and

(c) state practical examinations on ear impressions, audiometric testing, and defective hearing instruments. [~~one (1) written, and one (1) or more practical sections.~~]

(3) A passing grade shall consist of a [~~composite~~] score of seventy-five (75) [~~(70)~~] percent[~~, with not less than a minimum score of seventy (70) percent~~] on each [~~any~~] section. Candidates shall be required to retake only those portions of the examination on which they fail to achieve a passing score.

(4) [~~(3)~~] A notification of examination results shall [~~will~~] be issued by the board to each applicant taking [~~all persons who take~~] the qualifying examination.

(5) An apprentice [~~(4) A trainee~~] shall take the next qualifying examination held subsequent to one (1) year [~~six (6) months~~] after the effective date of his apprentice [~~trainee~~] permit.

(6) If an applicant fails to pass any section of the examination three (3) times, he shall be required to sit for all portions of the examination. The applicant may sit for the examination only after providing evidence of additional education and training as approved by the board.

[~~(5) If an applicant fails to pass the examination twice, he shall not be permitted to take the examination again without proof of further adequate study. Until such proof is given and the examination passed, the applicant may not deal in hearing aids.~~

~~(6) Examinations will be held regularly on the third Saturday of May each year and at such other times as the board shall determine.~~

~~(7) If an applicant is required to be reexamined the board shall designate those sections to be retaken.~~]

STEVE BARLOW, Board Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: 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 applicants to be licensed specialists in hearing instruments.

(a) Direct and indirect costs or savings to those affected: There are costs for the examination set forth in 201 KAR 7:015.

1. First year: See 201 KAR 7:015.
2. Continuing costs or savings: See 201 KAR 7:015.
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: Sets forth exam requirements.

(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: Reporting requirements will be the same.

(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 administrative 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:050. Identification, proof of licensure.

RELATES TO: KRS 334.020
STATUTORY AUTHORITY: KRS 334.150
NECESSITY AND FUNCTION: This regulation is promulgated in order to originate compliance with the regulation that an individual shall show proof of licensure while engaging in the [~~selling or~~] fitting of hearing instruments [~~aids~~].

Section 1. (1) An identification card shall [~~will~~] be issued to each holder of a license[~~, certificate of endorsement,~~] or apprentice [~~temporary trainee~~] permit, which lists the name of the holder, along with the address of the office where his license [~~certificate,~~] or apprentice [~~trainee~~] permit is displayed, and which he shall be required to keep in his possession at all times during the performance of his duties.

(2) Upon request of any client or prospective client, a board member, or any peace officer, he shall permit the identification card to be inspected for purpose of identification.

STEVE BARLOW, Board Chairman
APPROVED BY AGENCY: November 12, 1993
FILED WITH LRC: November 15, 1993 at noon
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: 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 licensed specialists in hearing instruments.
(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: Requirements for ID cards.
(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: Reporting requirements will be the same.
(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 administrative 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:070. License renewal.

RELATES TO: KRS 334.110
STATUTORY AUTHORITY: KRS 334.150
NECESSITY AND FUNCTION: To enumerate certain requirements for renewals.

Section 1. Responsibility for filing for renewal of licenses or apprentice [~~,~~] permits [~~or certificates~~] and for paying fees shall rest with the individual holder. The board shall [~~is~~] not be responsible for sending a letter of reminder.

Section 2. For renewal of a license [~~or certificate~~] the holder shall send the board with his renewal application, a copy of a certificate of calibration for his audiometric testing equipment completed within the last twelve (12) months, and satisfactory evidence of continuing education hours as required in 201 KAR 7:075.

STEVE BARLOW, Board Chairman
APPROVED BY AGENCY: November 12, 1993
FILED WITH LRC: November 15, 1993 at noon
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: 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 licensed specialists in hearing instruments.
(a) Direct and indirect costs or savings to those affected: There are licensure renewal fees set forth in 201 KAR 7:015.
1. First year: None in this regulation.
2. Continuing costs or savings: None in this regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Renewals must be filed annually.

(2) Effects on the promulgating administrative body: Sets out the renewal procedures.

(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: Reporting requirements will be the same.

(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 administrative 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:075. Continuing education requirements.

RELATES TO: KRS 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: The purpose of this administrative regulation is to establish a continuing education program for licensed hearing instrument specialists; to set forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. Each licensee shall be required to complete a minimum of ten (10) continuing education hours in order to renew his license each year. Continuing education hours for hearing instrument specialists in excess of the number required at the time of renewal of license may not be applied to future requirements.

Section 2. A minimum of five (5) of the required ten (10) continuing education hours shall be attained through programs sponsored by entities listed in Section 3(1) of this regulation. The remaining continuing education hours may be attained through any of the sources listed in Section 3 of this regulation.

Section 3. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of hearing instrument specialists. They may be earned by completing any of the following educational activities:

(1) Relevant offerings provided by the following organizations or institutions and approved by the board:

(a) The Hearing Aid Association of Kentucky (HAAK);

(b) The Kentucky Speech-Language and Hearing Association (KSHA);

(c) The International Hearing Society (IHS), or any of its affiliated state chapters;

(d) The American Speech-Language and Hearing Association (ASHA), or any of its affiliated state chapters;

(e) The Academy of Dispensing Audiologists (ADA), or any of its affiliated state chapters; [~~or~~]

(f) The American Academy of Audiology (AAA), or any of its affiliated state chapters; or

(g) The American Academy of Otolaryngology, or any of its affiliated state chapters.

(2) Relevant offerings of the following types that have been reviewed and approved by the board:

(a) Manufacturers professional seminars;

(b) Accredited schools' continuing education programs.

(3) Related areas not specifically a part of the field of hearing instruments may be approved for up to two (2) continuing education hours, if the board believes that said related areas may serve to enhance the licensee's ability to practice.

Section 4. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.

(1) A sponsor shall be any person, school, association, company, corporation, or group who wishes to develop a continuing education program.

(2) Programs shall be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of the [~~such an~~] experience prior to actual participation.

(3) Requests for program changes shall be made to and accredited by the board, or the evaluation and accreditation of the program becomes null and void.

(4) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(5) Sponsors shall maintain for three (3) years records of the name of those participants who complete a program.

Section 5. Sponsors and licensees requesting approval of continuing education for hearing instrument specialists shall submit an application to [~~containing such information as the board may require on forms provided by~~] the board. Licensees shall keep valid records, receipts, and certifications of continuing education hours completed for three (3) years and submit [~~such~~] certification to the board on request.

Section 6. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his license as provided in KRS Chapter 334.

Section 7. Each licensee shall submit, with the annual renewal, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year. In the event any licensee shall fail to submit a list of continuing education hours by the first of February, the board secretary shall notify the licensee at his last known address that his license shall be subject to suspension. Upon proper application to the board a licensee may be granted a deferral on a year to year basis at the discretion of the board for [~~such~~] reasons as illness, incapacity, or other similar extenuating circumstances. A licensee shall be exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.

Section 8. Each licensee shall keep the board informed of his correct address.

STEVE BARLOW, Board Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this

agency in writing by December 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: 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 licensed specialists in hearing instruments.

(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: Continuing education credit must be reported.

(2) Effects on the promulgating administrative body: Sets forth CE requirements.

(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: Reporting requirements will be the same.

(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 administrative 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:090. Unethical conduct; code of ethics.

RELATES TO: KRS 334.120
STATUTORY AUTHORITY: KRS 334.150
NECESSITY AND FUNCTION: This regulation is for the purpose of [~~further~~] defining unethical conduct as it relates to the fitting and sale of hearing instruments. It also establishes a code of ethics. [~~, as it might affect suspending or revoking the licenses of individuals in violation of regulations of federal agencies.~~]

Section 1. Unethical Conduct. The following acts shall be considered to be unethical conduct in the practice of selling and fitting hearing instruments and may subject the licensee or apprentice permit holder to the sanctions set forth by KRS 334.120(4):

(1) Any violation of Federal Trade Commission or Food and Drug Administration regulations pertaining to the sale or fitting of hearing instruments;

(2) The obtaining of any fee or the making of any sale by fraud or misrepresentation;

(3) Employing directly or indirectly any suspended or unregistered person to perform any activity covered by this chapter;

(4) Using, causing, or promoting the use of any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is false, misleading, deceptive or untruthful;

(5) Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(6) Advertising professional superiority;

(7) Falsely representing that the service or advice of a person licensed to practice medicine shall be used or made available in the:

(a) Selection;
(b) Fitting;
(c) Adjustment;
(d) Maintenance; or
(e) Repair of hearing instruments, when that is not true;

(8) Using words, abbreviations or symbols which give the impression that service is being provided by persons trained in medicine or audiology when that is not, in fact, true;

(9) Indicating that the licensee's service is state recommended;

(10) Permitting the use of a license by a person other than the licensee;

(11) Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist; or

(12) Claiming an affiliation with a professional association which does not in fact exist or the use of a degree or title not actually earned or held.

(13) Conducting business while suffering from a contagious or infectious disease.

(14) Engaging in the fitting and sale of hearing instruments under a false name, or alias;

(15) Selling a hearing instrument to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing instruments;

(16) Gross incompetence or negligence in fitting and selling hearing instruments;

(17) Failing to comply with:

(a) Any request of the board for information;
(b) An agreed order with the board; or
(c) A directive or order by the board;

(18) Practicing while under suspension or revocation of licensure;

(19) Practicing while under the influence of alcohol or any controlled substance not prescribed by a medical doctor;

(20) Failing to make a refund in a timely manner as set forth by KRS 334.210(8);

(21) Failing to fully complete the sales agreement requirements of KRS 334.030; or

(22) Violating any of the provisions of KRS Chapter 334 or the administrative regulations promulgated thereunder.

Section 2. Code of Ethics. Hearing Instrument Specialists engaged in the practice of the testing of human hearing, and in the selection, counseling, fitting, dispensing, and servicing of hearing instruments, shall hold paramount the welfare of the client. The hearing instrument specialist shall:

(1) Utilize all resources available, including referral to other

specialists as needed;

(2) Accept and seek full responsibility for the exercise of judgment within the area of his expertise. These services include the selection, counseling, fitting, dispensing, and servicing of hearing instruments;

(3) Not guarantee outstanding results from the use of hearing instruments, products, services, or counseling when this is not the case;

(4) Exercise caution not to mislead persons to expect unattainable results;

(5) Hold in professional confidence all information and professional records concerning a client and use that data only for the benefit of the client or as the law demands;

(6) Keep the welfare of the client uppermost at all times;

(7) Avoid personal invective directed toward professional colleagues or members of hearing health care professions;

(8) Not agree to practice under terms or conditions which tend to interfere with or impair the proper exercise of his professional judgment and skill, which cause a deterioration of the quality of his service, or which require him to consent to unethical behavior;

(9) Initiate and maintain records of services provided to clients;

(10) Not participate with other health professionals or any other person in agreements to divide fees or to cause financial or other exploitation when rendering professional services;

(11) Not delay furnishing care to clients served professionally, without just cause; and

(12) Not discontinue services to clients without providing reasonable notice of withdrawal, providing all contractual agreements have been satisfied. [~~Any violation of Federal Trade Commission regulations as pertains to the hearing aid industry, or Food and Drug Administration regulations, as pertains to hearing aids, by a holder of a license, apprentice trainee permit or certificate of endorsement may be considered unethical conduct in the practice of fitting and dealing in hearing aids.~~]

STEVE BARLOW, Board Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: 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 licensed specialists in hearing instruments.

(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: Information shall be furnished to the board upon request.

(2) Effects on the promulgating administrative body: Sets forth code of ethics.

(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 administrative 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.

GENERAL GOVERNMENT CABINET
Licensing Board for Specialists in Hearing Instruments
(Proposed Amendment)

201 KAR 7:100. Procedure for processing complaints [~~denial, suspension, nonrenewal or revocation hearings~~].

RELATES TO: KRS 334.120, 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: The purpose of this regulation is to outline the administrative [~~adjudication~~] procedure [~~before the Board~~] for the processing of complaints. [~~Licensing Hearing Aid Dealers in trainee permit, license and certificate of endorsement denial, suspension, nonrenewal and revocation hearings.~~]

Section 1. [~~Scope and~~] Definitions. (1) "Chairman" means the chairman of the board. [~~These regulations govern the procedure for the Kentucky Board for Licensing Hearing Aid Dealers in all proceedings before the board in which the legal rights, duties or privileges of any person is required by statute or by these rules to be determined after an opportunity for a hearing. These rules shall be construed to secure a just, speedy and inexpensive determination of every proceeding.~~]

(2) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 334 or the administrative regulations promulgated thereunder by a licensee or other person. [~~For purposes of administrative adjudicatory procedure unless the context otherwise requires:~~

~~(a) "Party" means any person or agency named or admitted as a party, to any proceedings of the board and shall include only persons who have a real interest in a matter before the board.~~

~~(b) "Person" means any individual, partnership, corporation, association or public or private organization of any character other than an agency.~~

~~(c) "Order" means the whole or any part of a final disposition of an adjudication.~~

~~(d) "Contested case" means an adjudicatory proceeding before the board in which the legal rights, duties or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the board or by some other person.~~

~~(e) "Board" means the Kentucky Board for Licensing Hearing Aid Dealers.~~]

(3) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of KRS Chapter 334 or the regulations promulgated thereunder.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensee or other person and commences a formal disciplinary proceeding.

(5) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal disposition of any matter without further recourse to formal disciplinary procedures.

(7) "Investigative assistant" means an appropriately licensed individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints [~~and Investigations~~]. (1) Complaints may be submitted by an individual, organization, or entity. [~~Complaints. A complaint may be made by any person against the holder of a permit, license or certificate of endorsement by the filing of written charges with the board's offices in Frankfort, Kentucky. The written complaint shall contain the name and address of any person making charges as well as the name and address of the person or persons against whom charges are being made and a clear and concise statement of the facts giving rise to the complaint. Any complaint or charge filed with the board will be forwarded to the dealer or licensee involved and the dealer or licensee will be given thirty (30) days to resolve the problem or to make a full satisfactory reply thereto. Any defamatory matter in a formal written complaint will be exercised by the board prior to being forwarded to the dealer or licensee. The person filing the complaint or charge will be informed of the resolution or reply received from the dealer or licensee.~~]

(2) Complaints shall be in writing and shall be signed by the person offering the complaint. [~~Investigations. Upon the receipt of a complaint and following the expiration of the thirty (30) days provided for in subsection (1), the board or its appointed committee may cause an investigation to be made by an individual board member, by any investigation committee, by the full board or by any agent or representative appointed by the board. Upon the completion of any investigation, the person or persons making such investigation shall submit a full written report to the board containing a succinct statement of the facts disclosed by the investigation.~~]

(3) The board may file a complaint based on information in its possession.

(4) A copy of the complaint shall be sent to the licensed individual named in the complaint along with a request for that individual's response to the complaint and a copy of the following documentation:

(a) Sales contract;

(b) Audiogram;

(c) Signed medical waiver;

(d) Delivery statement; and

(e) Record of service to the client.

(5) The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of fifteen (15) days from the date of receipt to make a response.

(6) Failure to respond in a timely fashion may constitute unethical conduct as set forth by administrative regulation.

(7) The board shall also request from the complaining party, a copy of the following documents:

(a) Sales contract;

(b) Audiogram; and

(c) Delivery statement.

Section 3. Board Review and Decision on Hearing. (1) After the receipt of a complaint, and the time period for the responses has expired, the board shall review the material received pursuant to Section 2 of this administrative regulation and shall make a determination as to the proper assignment of the complaint. At this point the board may make a preliminary determination that one (1) or more of the following conditions exist:

(a) The consumer appears to be entitled to a refund of some or all moneys paid for the hearing instrument;

(b) The individual may have violated one (1) or more sections of the statutes or regulations, but there is not enough evidence to proceed without further investigation;

(c) The individual may have violated one (1) or more sections of the statutes or regulations and there is sufficient evidence to proceed;

(d) The individual appears to be practicing without benefit of appropriate licensure and the matter may be pursued through criminal prosecution or injunctive relief within the court system; or

(e) The individual appears to have functioned in compliance with all appropriate statutes and administrative regulations and there appears to be no cause of action for the board to pursue.

(2) When in the opinion of the board, the complaining party appears to be entitled to a refund of some or all moneys, the board may direct the individual to make a refund.

(3) When in the opinion of the board, the information gathered indicates that a violation of the statutes or administrative regulations may have occurred, but the board does not have sufficient evidence to file a formal complaint, the board shall authorize its attorney and a designated investigative assistant to investigate the matter and report their findings to the board at their earliest opportunity.

(4) When in the opinion of the board, the information gathered indicates that the filing of a formal complaint is warranted, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 5 of this administrative regulation.

(5) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be selling and fitting hearing instruments without proper licensure, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. The complaint shall be forwarded to the county attorney of the county where the alleged violation may have occurred alleging the selling and fitting hearing instruments without appropriate licensure with a request that appropriate action be taken under KRS 334.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of veterinary medicine. [~~Commencement of Adjudicatory Proceedings. Upon the receipt of any investigative report referred to in Section 2(2) of this regulation or after the expiration of the thirty (30) day period referred to in Section 2(1) of this regulation where an investigation is not made, the board may begin formal adjudicatory proceedings in accordance with the following procedure:~~

~~(1) If it is determined that the facts alleged in the complaint and/or investigative report could constitute grounds for the suspension, probation or revocation of a permit, license or certificate of endorsement a hearing shall be scheduled before the board on these allegations. In any case in which the board has denied an application for or failed to renew a permit, license or certificate of endorsement a hearing will only be scheduled upon receipt by the board of a written request submitted by or on behalf of the person whose application for permit, license or certificate of endorsement was denied or not renewed. Any required hearing will be held within three (3) months, or as soon thereafter as practicable, after the announcement of the proceedings by receipt of a complaint or after receipt of the investigation report, whichever is later, or within three (3) months, or as soon thereafter as practicable, after the board's receipt of a written request for a hearing. In any contested case, whether it be instituted by the board or by some other person, all the parties to the~~

~~proceeding shall be given reasonable notice and an opportunity to be heard.~~

~~(2) Notice. The notice provided for shall be issued in the name of the board by the chairman thereof and shall state:~~

~~(a) The time, date, place and nature of the hearing;~~

~~(b) The legal authority and jurisdiction under which the hearing is to be held;~~

~~(c) The particular sections of the statutes or rules involved; and~~

~~(d) A short and plain statement of the complaint or charges which are being preferred and the remedy which is being sought. The notice shall be personally served or mailed to the last known address of the party or parties not less than twenty (20) days before the date of the hearing.~~

~~(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to appear personally at the hearing and by counsel, and shall have the right to cross examine witnesses appearing against them and to produce witnesses on their own behalf. When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders or other correspondence shall be served on such attorney; service on the attorney will be considered as service on the party and the board shall be notified of any change in such attorney.~~

~~(4) Hearing tribunal. Any member or members of the board who were appointed as individuals or as a committee for investigation of a complaint or charge against a licensee or dealer will not sit on the board for adjudicatory purposes in connection with the same complaint or charge investigated. The remaining members of the board will constitute a hearing committee which will conduct all hearings before the board. The chairman of the board or his designate will preside over the hearing proceedings; if the chairman is unavailable or ineligible to preside at such hearing the vice chairman of the board shall preside.~~

~~(5) Authority to administer oaths. In hearings before the board any oath or affirmation required may be administered by any person authorized to administer oaths by the laws of the Commonwealth of Kentucky.~~

~~(6) Presentation of evidence. The evidence against the licensee or dealer or other person concerning the pending complaint or charge will be presented by the individual member or committee of the board who conducted the investigation, if any, or by any other qualifying person or persons. Additionally or in the alternative, any witness or other evidence may be questioned or introduced by any member or members of the hearing committee of the board.]~~

Section 4. Settlement by Informal Proceedings. (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately disposing of the matter.

(2) Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board. ~~[Conduct of Hearings; Witnesses; Burden of Proof; Evidence. (1) The board may hear testimony of any person present at the hearing who has information to offer bearing on the subject matter of such hearings. The board may ask any witness questions as may be required for a full and true disclosure of the facts. The board shall have only one (1) witness before them at any one (1) time and other witnesses may be excluded from the hearing room while any one (1) witness is being questioned.~~

~~(2) The hearing in a contested case involving a suspension, probation or revocation of a license, permit or certificate of endorsement shall proceed in the following order, unless the board, for special reasons otherwise directs:~~

~~(a) The party filing the complaint or preferring the charges or the persons appointed or designated to present the evidence against the licensee must briefly state the substance of the charges and the evidence by which he expects to sustain them.~~

~~(b) The party against whom a complaint has been filed or charges otherwise preferred may briefly state the substance of his defense and the evidence which he expects to offer in support of it.~~

~~(c) The party filing the complaint or otherwise preferring the charges or the person(s) appointed or designated to present the evidence against the licensee or dealer shall have the burden of proof in the whole action, therefore he must produce his evidence first; the party against whom a complaint has been filed or charges preferred may then produce his evidence. The board, however, may regulate the order of proof in any proceeding to expedite the hearing and to enable the board to obtain a clear view of the whole evidence.~~

~~(d) The parties will then be confined to rebuttal evidence, unless the board, in its discretion, permits them to offer additional evidence in chief.~~

~~(e) The parties may then submit the matter to the board for decision, or present arguments on the issues involved. In the arguments, the party filing the complaint or otherwise preferring the charges or the person appointed or designated to present the evidence against the licensee or dealer shall have the conclusion and the party against whom the complaint was filed or charges otherwise preferred shall have the opening.~~

~~(3) In a hearing requested in writing by a person whose application for a permit, license of certificate of endorsement has been denied or not renewed the burden of proof and order of proceedings, delineated in subsection (2) of this section, shall be reversed.~~

~~(4) In any contested case, the board will as far as practical, adhere to the following rules of evidence.~~

~~(a) Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky, and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky, will be admitted in hearings before the board; however, in the board's discretion, matter may be admitted if the board deems it necessary for a full and true disclosure of the facts and the matter will be of assistance to the board in determining the rights of the parties.~~

~~(b) Every party shall have the right to present such oral or documentary evidence exhibits and rebuttal evidence and conduct such cross examination as may be required for a full and true disclosure of the facts. Documentary evidence may be introduced in the form of copies or excerpts, if the original is not readily available; provided that upon request the parties or the board shall be given an opportunity to compare the copy with the original.~~

~~(c) When a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, all or part of the evidence may be received in written form by affidavit or prepared statement. Prepared statements shall not be read or made a part of the record until the party against whom the statement is offered has been given a reasonable time for review and objection.~~

~~(d) Irrelevant, immaterial or unduly repetitious evidence will be excluded and the board will give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.~~

~~(e) The board may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the board's specialized knowledge; provided, however, the parties shall be afforded an opportunity to contest the facts so noticed.~~

~~(f) Objections to evidentiary offers may be made and shall be noted in the record.~~

~~(g) When necessary to ascertain facts which cannot otherwise be proved, evidence not admissible under the foregoing rules may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.~~

~~(5) The parties to any hearing may agree to waive any one or more of the procedural steps which would otherwise precede the reaching of a final decision by the board, but such waiver shall not be binding on the board.]~~

Section 5. Notice and Service of Process. (1) Any notice required by KRS Chapter 334 or this administrative regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or if known, by service on the named individual's attorney of record, if appropriate. Refusal or service avoidance shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, that notice shall be sent to the appropriate person at least twenty (20) days prior to the hearing. [~~Deliberations; Records; Final Order. (1) Deliberations. During any hearing and after the case has been submitted to the board for final decision, the deliberations of the board will be governed by the following principles:~~

~~(a) Ex parte investigations. Members of the board shall make findings of fact and conclusions of law in a contested case or who shall render a decision in a contested case, shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any board member may consult with other members of the board, and may have the aid and advice of one or more personal assistants, including the assistance of counsel.~~

~~(b) Separation of functions. No member, officer of employee of the board who is engaged in the performance of investigative or prosecuting functions for the board in a contested area shall, in that or a factually related case, participate or advise in the decision, except as a witness or counsel in the public hearing.~~

~~(c) Examination of evidence. The board shall personally consider the whole record or such portions thereof as may be cited by the parties, and the board's technical competence and specialized knowledge may be utilized in the evaluation of the evidence.~~

~~(d) The board at its discretion may recess a hearing for the taking of additional discovery and evidence as required.~~

~~(2) Record. The record shall include all pleadings, motions, exhibits, documentary and testimonial evidence received or considered, a statement of matters officially noticed and questions and offers of proof and rulings thereon. A record or transcript of the oral proceedings will need not be made by the board. Should any party desire a written transcript of the oral proceedings it will be necessary that they pay for said transcript.~~

~~(3) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the office record. It shall include a concise and explicit statement of the findings of facts and conclusions of law, separately stated, and shall be signed by the presiding officer. The original thereof shall be filed as a part of the record of the case and shall be retained in the custody of the board unless an appeal is taken therefrom and one (1) copy of the order shall forthwith be served on each party to the proceeding.~~]

STEVE BARLOW, Board Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9:30 a.m., at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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: 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 licensed specialists in hearing instruments.

(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: Sets forth hearing procedures.

(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 administrative 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.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:023. Endorsement.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565

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 standards for the endorsement of a physician by the licensing authority of another jurisdiction to the board.

Section 1. Endorsing Bodies Recognized by the Board. An applicant may fulfill the examination requirement for licensure without further testing in this state upon certified written endorsement that the applicant has successfully completed an examination approved by the board in accordance with the requirements of 201 KAR 9:031 from any of the following entities:

(1) Licensure authority of another state, United States territory or Canadian province;

(2) National Board of Medical Examiners;

(3) National Board of [~~Examiners for~~] Osteopathic Medical Examiners, Inc.; [~~Physicians and Surgeons; and~~]

(4) Federation of State Medical Boards of the United States, Inc.; and

(5) United States Medical Licensing Examination.

Section 2. Endorsement Defined. Endorsement means the written certification of an authorized officer of a recognized entity that the applicant is in good standing, that the endorsing state has standards substantially equivalent to those of the Commonwealth, and has successfully completed an examination recognized by this board. Endorsement should not be confused with "reciprocity" which is not recognized as a licensure mechanism by this board. Endorsement only results in the fulfillment of the examination requirement for licensure if the requirements of 201 KAR 9:031 have been satisfied.

Section 3. Endorsement by the Board. The board will not endorse any physician to the licensure authority of another state, United States territory or Canadian province unless the physician holds a valid, current and effective license to practice medicine or osteopathy in the Commonwealth.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All applicants for licensure to practice medicine in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: Establishment of a recognized examination for candidates being endorsed from other jurisdictions and applicable standards for administering the examination.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

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

1. First year: See 3(2)(a) above.

2. Continuing costs or savings: See 3(2)(a) above.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was having no applicable standards for administering the USMLE.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: N/A - see 3(5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see 3(5) above.

(6) Any additional information or comments: The board feels that this regulation will assure the public of continued competency of Kentucky physicians.

TIERING: Is tiering applied? No. This requirement shall pertain to all licensees of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:031. Examinations.

RELATES TO: KRS 311.565(13, (16), (18), (22)

STATUTORY AUTHORITY: KRS 311.565(13), (16), (18), (22)

NECESSITY AND FUNCTION: KRS 311.565 authorizes the board to promulgate administrative regulations governing examinations. The purpose of this administrative regulation is to establish standards and requirements relating to examinations.

Section 1. Basic Requirement; Passing Score. (1) An applicant for a license or permit issued by the board shall provide written proof that he has received a score:

(a) Of seventy-five (75), or its numerical equivalent;

(b) A FLEX weighted average (FWA) of seventy-five (75) in a single sitting.

(2) A passing score for an applicant who takes Component I and Component II of the Federation Licensing [~~Licensure~~] Examination (FLEX) shall be a score of seventy-five (75) on each component.

(3) The board shall recognize a passing score on the FLEX or any component thereof provided the applicant passes the entire examination within seven (7) years. The board may, however, waive this requirement upon proof submitted by the applicant of extraordinary circumstances.

(4) A passing score for an applicant who takes Step 3 of the United States Medical Licensing Examination (USMLE) shall be a score of seventy-five (75) or its numerical equivalent.

(5) The board shall recognize the following combinations of examinations only if completed prior to the year 2000:

(a) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus NBME Part III or USMLE Step 3; or

(b) FLEX Component I plus USMLE Step 3; or

(c) NBME Part I or USMLE Step 1, plus NBME Part II or USMLE Step 2, plus FLEX Component 2.

Section 2. Examinations Approved by the Board. The following examinations are approved by the board in regard to the fulfillment of the examination requirement for licensure:

(1) Examinations administered prior to 1972 by the licensure authority of another state, United States territory or Canadian province upon sufficient proof that the examination consisted of comprehensive testing in the basic and clinical sciences;

(2) The examination administered by the Federation of State Medical Boards, (FLEX);

(3) The examination administered by the National Board of Medical Examiners (NBME); [and]

(4) The examination administered by the National Board of Osteopathic Medical Examiners (NBOME); [for Osteopathic Physicians and Surgeons.]

(5) The examination administered jointly by the Federation of State Medical Boards and National Board of Medical Examiners entitled United States Medical Licensing Examination (USMLE).

The board may deny a license or permit when in the board's opinion the examination by which the applicant is seeking to fulfill the examination requirement inadequately tested the applicant's knowledge, education, training and competency.

Section 3. Examination Administered by Board. (1) The board shall administer the state medical examination [FLEX] twice yearly in accordance with protocol established by the Federation of State Medical Boards of the United States, Inc. and the National Board of Medical Examiners.

(2)(a) The board or its approved designee [executive director] shall oversee the examination and may expel any person for fraudulent or disruptive behavior.

(b) The board [executive director] may allow an applicant to sit for the state medical examination [FLEX] when in its [his] opinion the applicant appears to have fulfilled the appropriate eligibility requirements.

(3) Allowing an applicant to sit for the state medical examination [FLEX or any component thereof] shall not be considered as certification that any requirement for licensure has been fulfilled.

Section 4. Eligibility for Examination. (1) An applicant shall be eligible to take the state medical examination if the applicant has fulfilled the following:

(a) Has obtained the M.D. degree (or its equivalent) or the D.O. degree from a medical school approved by the board; and

(b) Has completed successfully Steps 1 and 2 of the USMLE or Parts I and II of the NBME or Component 1 of the FLEX; and

(c) Is currently enrolled in an approved postgraduate training program; and

(d) Is certified by the ECFMG or has successfully completed a "Fifth Pathway" program if a foreign medical school graduate. For purposes of this section, a "Fifth Pathway" is defined as an academic year of supervised clinical education provided by an LCME-accredited medical school.

(2) An applicant shall be eligible to take the state medical examination if the applicant is within a seven (7) year period beginning with the first passage of either Step 1 or Step 2 of the USMLE.

[(1) An applicant shall be eligible to take both components of the FLEX if the applicant has fulfilled all other requirements for regular licensure.

(2) An applicant shall be eligible to take Component I of the FLEX if the applicant has graduated from a medical school approved by the board.

(3) An applicant shall be eligible to take Component II of the FLEX if the applicant has previously passed Component I or completed one (1) year of approved postgraduate training or is currently enrolled in an approved postgraduate training program.

(4)(a) Except as provided in paragraph (b) of this subsection, an applicant shall not be eligible to sit for the FLEX, or a component thereof, if he has failed the FLEX, or a component thereof, three (3) times.

(b) An applicant who has failed the FLEX three (3) times may sit for the FLEX, or a component thereof, if he submits proof that he has completed an additional year of approved postgraduate training.

(c) Failure of FLEX, occurring prior to June 1, 1985, shall be added to determine the total number of failures.

(d) After June 1, 1985, failures of FLEX components shall be added to determine the total number of failures.

Section 5. Recognition of Passing Scores by Endorsement. (1) Except as provided by subsection (3) of this section, the board shall not recognize a passing score of the FLEX by endorsement if the applicant has accumulated a total of three (3) failures.

(2) The three (3) failures may consist of failures of:

(a) The entire examination; or

(b) Components thereof; or

(c) A combination of the entire examination and components thereof.

(3) The board shall recognize a passing score by endorsement, made after an applicant's fourth examination, if he has submitted proof that he has completed an additional year of the approved postgraduate training required for the type of licensure he seeks.]

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All applicants for licensure to practice medicine in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: Establishment of a recognized examination for candidates being endorsed from other jurisdictions and applicable standards for administering the examination.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: N/A

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

1. First year: See 3(2)(a) above.

2. Continuing costs or savings: See 3(2)(a) above.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was having no applicable standards for administering the USMLE.

(5) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed regulation.

(a) Necessity of proposed regulation if in conflict: N/A - see 3(5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see 3(5) above.

(6) Any additional information or comments: The board feels that this regulation will assure the public of continued competency of Kentucky physicians.

TIERING: Is tiering applied? No. This requirement shall pertain to all licensees of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:041. Fee schedule.

RELATES TO: KRS 311.530 to 311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565
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 a schedule of fees for services rendered by the board.

Section 1. Fee Schedule. (1) Fee for sitting the state medical examination administered by the board:

(a) Examination fee - $375.

(b) Examination application fee - $50. [~~Fee for sitting for both components of examination administered by board - $500.~~

~~(a) Component I - $250.~~

~~(b) Component II - $300.~~]

(2) Fee for initial issuance of regular license - $225 [~~150~~].

(3) Fee for initial issuance of limited license - $75 [~~65~~].

(4) Fee for annual registration or renewal of any license - $65.

(5) Penalty for late annual registration or renewal:

(a) March 1 - April 1 - $50 [~~25~~].

(b) After April 1 - $100.

(6) Fee for reregistration of inactive license - $90.

(7) Endorsement of licensee to licensing agency of another jurisdiction - $50 [~~20~~].

(8) Certification of licensee's examination grades to licensing agency of another jurisdiction - $10.

(9) Fee for temporary permit (credited to fee for regular license if subsequently issued) - $50.

(10) Fee for emergency permit - $25 [~~15~~].

(11) Fee for duplicate license certificate - $10.

(12) Fee for copy of "Kentucky Medical Directory" - $15 [~~10~~].

(13) Fee for one (1) year subscription to Newsletter (fee waived for licensees) - $10 [~~5~~].

(14) Fee for license application - $25.

(15) Fee for sitting for competency examination administered by board - $275.

(16) Fee for initial issuance of regular license for graduates of Kentucky medical schools who remain in this state for postgraduate training - $150.

ROYCE E. DAWSON, President
APPROVED BY AGENCY: November 9, 1993
FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All applicants for medical licensure in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain the same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation is in need of inflationary revision.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed as an inflationary revision.

TIERING: Is tiering applied? No. This requirement shall pertain to all licensees of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:051. License renewal and registration; reregistration of inactive license.

RELATES TO: KRS 311.530 to 311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565
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 procedures and rules regarding the annual renewal and registration of licenses and the reregistration of inactive licenses.

Section 1. Annual Renewal and Registration. (1) On or about January 1 of each year, the executive director shall mail written notification to all physicians holding a regular license to practice medicine and osteopathy in the Commonwealth that annual registration of their license must be executed on or before March 1. The notification shall indicate the annual registration fee and shall warn the licensee that failure to timely register will cause his or her license to become inactive.

(2) On or about January 1 of each year the executive director shall mail written notification to all physicians holding a valid and active limited license-institutional practice or limited license-general practice which had been issued to the holder on or before September 1, 1972, that annual renewal of their limited license must be executed on or before March 1. The notification shall indicate the annual renewal fee and shall warn the limited licensee that failure to timely renew will cause his or her limited license to be cancelled and unreissuable.

(3) On or about thirty (30) days prior to the expiration of a limited license-institutional practice issued pursuant to KRS 311.571(4) or as a training permit under prior law, the executive director shall mail written notification to the physician that his or her limited license will expire on an indicated date, being one (1) year from the date of issuance. The notification shall inform the holder that he or she must obtain a limited license-institutional practice pursuant to KRS 311.571(3) on or before the expiration date and shall warn the holder that if the physician fails or is unable to obtain such a limited license or a regular license the physician will no longer have licensure authority to practice in the Commonwealth.

(4) On or about thirty (30) days prior to the expiration of a limited license-institutional practice issued pursuant to KRS 311.571(3) the executive director shall mail written notification to the limited licensee that his or her limited license will expire unless renewed on or before the expiration date, being one (1) year from the date of issuance. The notification shall indicate the annual renewal fee and shall warn the limited licensee that failure to timely renew will cause his or her limited license to be cancelled.

Section 2. Questionnaire Concerning Matters of Licensure and Discipline. In conjunction with any notification required to be sent by Section 1 of this regulation, the executive director shall also send the licensee a questionnaire concerning matters of licensure and discipline to allow the board to better evaluate the continued fitness of physicians practicing in the Commonwealth. The questionnaire shall be signed by the licensee and verified by a notary. A license will not be renewed, registered or reregistered unless and until the questionnaire has been completed to the executive director's satisfaction.

Section 3. Late Registration or Renewal. Any physician holding either a regular license, a limited license-institutional practice pursuant to KRS 311.571(3), a limited license- institutional practice issued prior to September 1, 1972, or a limited license-general practice who fails to register or renew for the coming year on or before the date designated on the notification shall be sent a second notification that shall indicate the annual registration or renewal fee, the penalty fee for late registration or renewal and the time allowed for late registration or renewal which shall not be longer than thirty (30) days beyond the date designated on the first notification for registration or renewal. In the event the licensee fails to register or renew his or her license by the date designated on the second notification, the license will be considered inactive or cancelled accordingly and continued practice by the physician will be considered the unauthorized practice of medicine or osteopathy.

Section 4. Reregistration of Inactive Regular License. Upon failure of a licensee to register his regular license for the year before the expiration of the time allowed for late registration, the license shall become inactive and continued practice by the physician will be considered the unauthorized practice of medicine or osteopathy. At any subsequent time the holder of an inactive license may seek reregistration of his or her license by paying the [~~annual registration fee and the~~] fee for reregistration, and satisfactorily completing the forms necessary for obtaining sufficient information concerning the reregistrant's present fitness to practice.

Section 5. All notifications required to be sent by this regulation shall be mailed to the licensee's last known address of which the board has record. Failure of the licensee to receive notice if mailed to the last known address will not excuse the licensee from compliance with the statutes or this regulation.

ROYCE E. DAWSON, President
APPROVED BY AGENCY: November 9, 1993
FILED WITH LRC: November 10, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt
(1) Type and number of entities affected: All applicants for medical licensure in the Commonwealth of Kentucky.
(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.
1. First year: See 1(a) above.
2. Continuing costs or savings: See 1(a) above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.
(b) Reporting and paperwork requirements: No additional

reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain the same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees to remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation contains several oversights from previous regulation which are no longer needed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed to eliminate language from previous regulation.

TIERING: Is tiering applied? No. This requirement shall pertain to all licensees of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:061. Limited licenses.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565

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 standards and guidelines regarding the issuance and renewal of limited licenses.

Section 1. Applicability. An applicant for limited license-institutional practice pursuant to KRS 311.571(3) or 311.571(4) shall not be issued a license or permit unless and until the applicant provides written proof that he or she is officially enrolled in a postgraduate training program in the Commonwealth approved by the board and submits evidence of having successfully passed Component 1 of the Federation Licensing Examination (FLEX), or achieved a passing score on the National Board of Medical Examiners (NBME) Part I and [~~or~~] Part II examinations, or achieved a passing score on the United States Medical Licensing Examination (USMLE) Step 1 and Step 2, or is employed as a professor or researcher in medicine by either the University of Kentucky College of Medicine or the University of Louisville School of Medicine.

Section 2. Scope of Practice. A limited license-institutional practice issued to a physician in an approved postgraduate training program shall enable the holder to practice as a physician within the parameters of the training program. A limited license-institutional practice issued to a physician who is employed by one of the Commonwealth's medical schools shall enable the holder to practice as a physician to the extent necessary to perform his responsibilities of employment. The executive director may suspend any such limited license-institutional practice upon evidence that the holder has practiced outside the scope of his or her licensure. All limited license-institutional practice shall be renewable annually and shall be issued on a medical school academic year, July 1 through June 30. This regulation shall not apply to those physicians in an approved postgraduate training program, who, on the effective date of this regulation, maintain a regular license to practice medicine in the Commonwealth of Kentucky.

Section 3. Applicability and Scope of Limited Licenses Held Prior to September 1, 1972. (1) All persons who as of the effective date of this regulation hold a valid and current limited license-institutional practice issued to them prior to September 1, 1972, may continue to hold their licenses if annually renewed. The holder may only practice within the confines of the institution for which his or her limited license is designated.

(2) All persons who as of the effective date of this regulation hold a valid and current limited license-general practice issued to them prior to September 1, 1972, may continue to hold their licenses if annually renewed. The holder may only practice within the confines of the geographical area for which his or her limited license is designated.

(3) Any limited license held prior to September 1, 1972, which is not timely renewed each year by the holder shall lapse and become void and the limited license will not be reissued under any circumstance. Practice outside the scope of the limited license shall result in the temporary suspension of the license and possible discipline. The board will not issue any new limited licenses like those described in this section and a limited license-institutional practice will not be converted to a limited license-general practice.

Section 4. Extent of Practice Allowed Under Limited License. A physician holding a limited license possesses all the powers of a physician allowed by the laws of the Commonwealth, to practice within the limited scope of his or her licensure; provided, however, that the holder of a limited license-general practice shall not perform surgery unless expressly authorized by the board.

Section 5. Form of License. All limited licensees shall be issued a certificate which shall state on its face whether it is a limited license-institutional practice (KRS 311.571(3) or 311.571(4)), a limited license-institutional practice (KRS 311.565(15)) or a limited license-general practice (KRS 311.555(15)). The certificate shall also indicate the institution or geographical area to which the holder's practice is limited and any limitations on the holder's scope of practice.

Section 6. Temporary Permit. Upon satisfactory completion of all forms and the submission of all necessary information in connection with an application for limited licensure-institutional practice, the executive director may issue a temporary permit to the applicant if the executive director believes that the application satisfies all the requirements for limited licensure-institutional practice and is otherwise fit to practice. The temporary permit shall remain in effect until the holder is issued a limited license-institutional practice by the board or until cancelled, but in no event shall the temporary permit be effective longer than sixty (60) days from the date of issuance. Denial of an application for limited licensure-institutional practice by the board shall cause the cancellation of a temporary permit if held by the applicant. The temporary permit may not be renewed or reissued.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All applicants for limited licenses - institutional practice of medicine in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain the same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees to remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation fails to adequately address the necessary licensing standards above.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed to improve the quality of medical practice in the Commonwealth of Kentucky.

TIERING: Is tiering applied? No. This requirement shall pertain to all applicants for limited licenses - institutional practice of medicine. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:081. Disciplinary proceedings.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565

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 set forth the procedures to be followed in handling formal and informal disciplinary proceedings before the board or before any committee to the board, such that the proceedings will be conducted with due regard for the rights and privileges of all affected parties.

Section 1. Scope. This regulation shall govern practice and procedure in regard to all disciplinary matters before the Kentucky Board of Medical License pursuant to KRS 311.530, et seq.

Section 2. Definitions. (1) "Executive director" means the executive director of the board or any assistant executive directors appointed by the board.

(2) "General counsel" means the general counsel of the board or any assistant general counsel appointed by the board.

(3) "Board" means the Kentucky Board of Medical Licensure or its inquiry and/or hearing panels.

(4) "Grievance" means any allegation in whatever form alleging misconduct by a physician.

(5) "Charge" means a specific allegation contained in any document issued by the board or its inquiry or hearing panels alleging a violation of a specified provision of the Kentucky Medical and Osteopathic Practice Act.

(6) "Complaint" means a formal administrative pleading authorized by the inquiry panel that sets forth charges against a physician and commences a formal disciplinary proceeding.

(7) "Show cause order" means an order directing the named physician to show cause why the board should or should not take a specified action based on specified information which the order alleges to be true.

(8) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "Informal proceedings" means proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal dispensation of any matter without further recourse to formal disciplinary procedures.

(10) "Act" means the Kentucky Medical and Osteopathic Practice Act.

Section 3. Reception of Grievances; Investigations. (1) Grievances may be submitted by any individual, organization or entity. The board shall retain a written form upon which grievances may be made and any party submitting a grievance may be required to complete the form and may also be required to give their affidavit acknowledging the truth and veracity to the best of their knowledge and belief of the information contained in the grievance.

(2) All grievances shall be investigated as necessary and presented to the inquiry panel for review unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel. The inquiry panel shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations. The inquiry panel shall further be empowered to request the attendance

of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter. The failure, without good cause, of any physician licensed to practice medicine or osteopathy by the board to appear before the inquiry panel when requested shall be considered unprofessional conduct.

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605-311.606 and may pursue investigations, on its own initiative, in regard to acts of noncompliance or any other perceived violation of the Act.

Section 4. Reports and Recommendations; Petitions. (1) When in the opinion of the inquiry panel a grievance warrants the issuance of a complaint against a physician, the inquiry panel shall cause a complaint to be prepared [~~together with a petition, signed by the chairman or vice chairman on behalf of the inquiry panel, stating the inquiry panel's belief that the charges are based upon reliable information~~].

(2) When in the opinion of the executive director a grievance warrants the issuance of a complaint against a physician and circumstances do not allow the timely presentation of the grievance to the inquiry panel, the executive director shall cause a complaint to be prepared [~~together with a petition, signed by the executive director, stating the executive director's belief that the charges are based upon reliable information and requesting the inquiry panel to authorize the issuance of the complaint~~].

(3) When in the opinion of the executive director or the inquiry panel a disciplinary matter warrants the issuance of a show cause order against a physician, the executive director or the inquiry panel shall cause a proposed order to be prepared [~~together with a petition briefly delineating a basis for the issuance of the show cause order~~].

(4) The board, on its own initiative, may issue a show cause order against a physician in regard to any application for licensure, obtaining, retaining or reobtaining licensure.

(5) Nothing in this subsection shall be construed to limit the board's power to deny a license to any applicant without a prior hearing upon a finding that the applicant has violated any provision of the Act.

Section 5. Complaints. (1) The complaint shall be signed and dated. The complaint shall be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named physician and shall be designated with an appropriate case number.

(2) The complaint shall set forth the board's jurisdiction in regard to the subject matter of the complaint and shall further set forth, in numerical paragraphs, sufficient information to apprise the named physician of the general nature of the charges.

Section 6. Show Cause Orders. (1) The show cause order shall be signed by an officer of the board and shall be dated. The show cause order shall be styled in regard to the license, application for license or application for renewal, registration or reregistration of license to practice in the Commonwealth of Kentucky held by or submitted by the named physician, appropriately, and shall be designated with an appropriate order number.

(2) The show cause order shall set forth the board's jurisdiction in regard to the subject matter of the order and shall further set forth, in numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named physician's license [~~or for the denial of the named physician's application for obtaining, retaining or reobtaining licensure appropriately~~].

(3) The show cause order shall direct the named physician to show cause why disciplinary action should not be taken in view of the matters expressed in the order. [~~The order may direct the named physician to appear at a designated time and place, provided that the named physician receives notice at least thirty (30) days prior to the hearing.~~]

Section 7. Orders to Respond. Upon issuance of a complaint the inquiry panel shall issue an order directing the charged physician to respond within thirty (30) days after receiving notice of the complaint, and informing the physician that failure to respond may be taken by the board as an admission of the charges.

Section 8. Orders of Temporary Restriction. [~~(1)~~] An order temporarily suspending, limiting or restricting the license held by the named physician shall set forth the grounds which the inquiry panel believes support a finding that sufficient reasonable cause exists to believe that the continued unaffected practice by the named physician would constitute a danger to the health, welfare and safety of the physician's patients or of the general public.

[~~(2) Except in extraordinary circumstances when the demands of time and circumstances do not allow, at least ten (10) days prior to consideration by the inquiry panel the named physician shall be notified of the nature of the charges. The charged physician may respond to the charges informally, either orally or in writing, and the inquiry panel shall consider the response.~~]

Section 9. Notice and Service of Process. (1) Any notice required by the Act or this regulation shall be in writing, dated and signed by the appropriate person.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail to the physician's last known address of which the board has record or by such service on the named physician's attorney of record. Failure of the named physician to receive actual notice after execution of the prescribed service shall not prejudice the board from pursuing proceedings that result in the denial or discipline of the named physician's license.

Section 10. Hearings Pursuant to Order Temporarily Suspending, Limiting or Restricting a License. (1) A physician whose license has been temporarily suspended, limited or restricted shall, upon written request, be accorded hearing on the board's order [~~within fifteen (15) days after making the request unless otherwise agreed. The hearing shall be limited to the sole purpose of determining whether the board's order was based on sufficient reasonable cause, provided, however, that the charged physician shall have the right to present evidence that indicates that the information upon which the board based its order was untrue or that the danger that existed at the time the order was issued has since been dissipated or alleviated~~].

(2) Any findings of fact or conclusions of law rendered by the hearing officer pursuant to a hearing on an order of temporary discipline shall not be binding upon the hearing panel in its ultimate determination regarding the charges contained in the complaint, nor shall the hearing officer thereafter be prejudiced from presiding at the hearing on the complaint.

(3) At the hearing on the order of temporary discipline, the hearing officer may entertain any motion timely submitted in regard to any matter concerning the disciplinary case, provided, however, that any orders issued pursuant to such motions shall not be considered appealable.

(4) Either party to the hearing on the order of temporary discipline may petition the hearing panel to review the order of the hearing officer either sustaining, modifying or withdrawing the inquiry panel's order by filing a written petition delineating those aspects of the hearing officer's determination with which the party takes exception and requesting the hearing panel to review the hearing officer's determination. The hearing panel may grant or deny review in its discretion.

(5) Nothing in this section shall be construed to limit either party's right to appeal an order sustaining, modifying or withdrawing an order of temporary discipline to the circuit court of the county in which the

board's offices are located as provided by statute. However, the filing of an appeal shall not prejudice the board's jurisdiction to continue the proceeding in regard to the charges contained in the complaint.

Section 11. Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer who is empowered to preside at any and all proceedings, to rule upon all motions and objections, to prepare and submit proposed findings of fact, conclusions of law [~~and disciplinary measures to the board~~] and to perform any other act necessary to the proper conduct of the proceedings.

(2) Appointment of the prosecuting attorney. The board's general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, provided, however, that the board may appoint special prosecuting attorneys in its discretion. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order or order of temporary discipline.

(4) Form of pleadings; service. Pleadings may be in any neat form provided that all pleadings must be dated and signed by the offering party. The original of all pleadings must be filed with the executive director for entry into the official record and copies must be served on the hearing officer, the opposing party and any other person who might be designated by the hearing officer.

(5) Prehearing conferences. Upon motion of either party or upon his or her own initiative, the hearing officer may order that a prehearing conference be held. The prehearing conference may be the forum for consideration of any matter properly before the hearing officer including all motions, discovery, stipulations, identification of issues, dates of future proceedings and objections.

(6) Discovery. Either party may at any time after the issuance of a complaint or show cause order move the hearing officer to order that discovery from the other party be allowed by any of the following methods:

(a) Oral deposition, provided, however, that either party shall have the right to move the hearing officer to order that the deposition be entered into the record in lieu of further testimony by the witness;

(b) Request for a more definite statement;

(c) Request for production of names of witnesses, documents and other demonstrative evidence; and

(d) Request for a brief synopsis of the testimony expected to be given by any expert witness.

The hearing officer may limit or allow discovery of any matter relevant to the issues and may issue protective orders as necessary.

(7) Hearings. Hearings shall proceed in accordance with the rules of examination applicable in courts of law in the Commonwealth. The rules of evidence applicable in courts of law in the Commonwealth shall apply, provided, however, that hearsay evidence shall be admissible unless irrelevant or grossly prejudicial. The order and burden of proof shall be established by the hearing officer, provided, however, that the burden of proof shall be upon the charged physician in any hearing on the charges contained in a show cause order. The hearing officer shall rule upon any motions or objections and may require the submission of briefs in regard to any issue. The hearing officer may allow opening and closing statements by either party, or other offers of prosecution or defense that will allow the orderly and expeditious conduct of the proceedings.

(8) Record. The hearing officer shall be charged with the responsibility of compiling a written record of the proceedings which shall contain all evidence introduced at the hearing and all pleas, motions, objections, responses, rulings and other legal documents which the hearing officer deems properly part of the record.

(9) Presentation of record, hearing officer's proposed findings, conclusions and recommendations. The hearing officer shall present the record, his or her proposed findings of fact, conclusions of law and recommendations to the executive director for deliberation by the hearing panel. The hearing officer shall serve a copy of his findings, conclusions and recommendations on all parties at least twenty (20) days prior to the date set for the hearing panel's final determination. All parties shall have the right to file exceptions to the hearing officer's findings, conclusions and recommendations ten (10) days prior to the date set for the hearing panel's final determination.

(10) Briefs. Any party to the proceeding may move the hearing officer to allow briefs to be filed with the hearing panel prior to the hearing panel's final determination. The hearing officer may grant the motion and establish a briefing schedule but only if the hearing officer believes that such a procedure would substantially aid the hearing panel in its deliberations. Briefs shall not exceed five (5) pages in length unless otherwise allowed by the hearing officer. The hearing panel may, on its own initiative, order that briefs be submitted.

(11) Oral argument. Any party to the proceeding may move the hearing panel to allow oral argument prior to the hearing panel's final determination. The hearing panel may order oral arguments on its own initiative.

(12) Board's findings of fact, conclusions of law and final order, remand. At the conclusion of its deliberations the hearing panel may adopt the hearing officer's proposed findings, conclusions and recommendations of action in whole or in part or may reject them totally and prepare its own. The hearing panel shall enter a final order dated and signed by an officer of the hearing panel stating its ultimate determination. Prior to, during or subsequent to any deliberations the hearing panel may remand the matter to the hearing officer for further proceedings as directed.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All practicing physicians in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.

(b) Reporting and paperwork requirements: No additional

reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees to remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation contains several oversights from previous regulation which are no longer needed and are either redundant or inconsistent with KRS Chapter 311.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see 3(5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see 3(5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed to eliminate language from previous regulation.

Tiering: Was tiering applied? No. This requirement shall pertain to all licensees of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:084. Fee schedule.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 311.565(22) authorizes the State Board of Medical Licensure to exercise all the administrative functions of the state in regard to the regulation of physician assistants. The purpose of this regulation is to establish a schedule of fees for services rendered by the board in performing its administrative functions.

Section 1. Fee Schedule. The board shall charge the following fees:

(1) Application for a certificate, $100.

(2) Application for a temporary certificate, fifty (50) dollars.

(3) Conversion from a temporary certificate to a certificate, fifty (50) dollars.

(4) Fee for biennial renewal of certificate, fifty (50) dollars.

(5) Penalty fee for late renewal of certificate, twenty-five (25) dollars.

(6) Issuance of a duplicate certificate, ten (10) dollars.

(7) Application by a physician for approval to employ a physician assistant, $100.

(8) Application to transfer the responsibility of the supervising physician to an approved supervising physician agent, fifty (50) dollars.

(9) Fee for emergency permit, fifteen (15) dollars.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All applicants for physician assistant certification from another state or those applicants seeking a temporary certificate or graduate physician assistant status.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain the same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees to remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation contains several oversights from previous regulation which are no longer needed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed to eliminate language from previous regulation.

TIERING: Is tiering applied? No. This requirement shall pertain to all physician assistants of the board. There is no valid reason to

impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:136. Procedure for certification of paramedics from other states; graduate paramedics; issuance of temporary certificates.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS 311.654
NECESSITY AND FUNCTION: KRS 311.654 authorizes the State Board of Medical Licensure to promulgate administrative regulations relating to the certification and practice of paramedics. The purpose of this administrative regulation is to establish procedures whereby paramedics certified in other states may apply for certification in Kentucky, and to establish procedures for issuance of graduate paramedic and temporary certificates. [directs the Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish procedures whereby paramedics certified in other states may apply for certification in Kentucky.]

Section 1. Procedure for Certification. In order to be eligible for consideration for certification as a paramedic, the applicant shall fulfill the following minimum requirements:

(1) Be eighteen (18) years of age or older; and

(2) Hold a valid motor vehicle operator's license; and

(3) Not be habitually addicted to or be an abuser of alcoholic beverages, drugs, or controlled substances; and

(4) Be able to demonstrate the ability to understand, read, speak, and write the English language; and

(5) Have a high school diploma or general equivalency diploma; and

(6) Be of good moral character; and

(7) Have successfully completed an emergency medical technician training course conducted in accordance with the U.S. DOT guidelines; and

(8) Have successfully completed a paramedic training course which included all aspects of the U.S. DOT paramedic training curriculum and which consisted, as a minimum, of the recommended accepted hours for classroom instruction and in-hospital clinical experience required by the curriculum at the time of the training. In addition, the applicant shall:

(a) Have completed 500 hours of supervised prehospital field internship. This requirement may be met by documented advanced life support ambulance experience; and

(b) Be currently certified as a paramedic or its equivalent in another state; and

(9) Have a physical examination performed within the twelve (12) months immediately preceding the date of application verifying that the applicant is in good physical health and has no disabilities that may prevent the applicant from functioning as a paramedic. This examination shall also include a chest x-ray or tuberculin skin test; and

(10) Submit a letter of recommendation from the provider's medical director which states that he agrees to supervise the individual as a paramedic graduate or to allow the individual to function on a temporary certificate under the supervision of the medical director; and

(11) Submit a notarized application form to the paramedic advisory committee of the Kentucky Board of Medical Licensure. The application shall be completed in detail and have attached to it the following:

(a) Proof of current certification as an emergency medical technician in the Commonwealth of Kentucky or eligibility to challenge the Commonwealth of Kentucky EMT examination. Certification as an EMT in Kentucky shall be attained by the applicant within six (6) months of his approval to challenge the paramedic certification examination; and

(b) Proof of current certification as a paramedic in another state; and

(c) Completed certificate of paramedic training form as supplied by the Kentucky Board of Medical Licensure. If the training curriculum schedule varies from that of the current revision of the U.S. DOT EMT-paramedic curriculum, the applicant shall also attach to his application a copy of the curriculum schedule, and number of hours of the paramedic training completed, along with the name of the physician supervising the training program who can be contacted if additional information is required; and

(d) Submit an evaluation form as supplied by the board from your most recent medical director or supervising physician or advanced life support provider; and

(e) [~~Submit a letter from the Kentucky advanced life support provider's medical director agreeing to supervise the applicant as outlined in subsection (14) of this section; and~~

~~(f)~~] A certified copy of the applicant's birth certificate; and

(f) [~~(g)~~] A copy of the applicant's operators license; and

(g) [~~(h)~~] Proof of current certification in advanced cardiac life support by the American Heart Association; and

(h) [~~(i)~~] Submit the appropriate application fee as outlined in 201 KAR 9:151, Section 2(1).

(12) The following may be grounds for denial of the challenge applicant:

(a) Be convicted as a youthful offender;

(b) Be convicted of a felony;

(c) Be discharged from the Armed Forces with a dishonorable discharge;

(d) Be court adjudicated as mentally ill or mentally retarded.

Section 2. Graduate Certification. (1) The committee shall review each application on an individual basis and at its discretion determine if the applicant may be permitted to function as a paramedic graduate.

(2) If the applicant has complied with Section 1(1) through (12) [~~(15)~~] inclusive, but has not completed a supervised field internship, the applicant may be considered for paramedic graduate status. Upon completion of these additional hours of field internship, as determined by the applicant's medical director, the applicant, upon recommendation by his medical director, may be eligible to sit for the paramedic certification examination.

(3) An applicant that is granted paramedic graduate status shall be admitted to such status for a period not to exceed a period of twelve (12) months from the date of issuance. Within the twelve (12) month period, the applicant shall:

(a) Complete the posttraining field internship period required by the medical director if he has not already done so; and

(b) Successfully complete all components of the paramedic certification examination. At least one (1) month prior to the examination, the applicant shall submit to the committee:

1. Letters from the provider and medical director verifying that the applicant has completed the requisite field internship experience; and

2. The appropriate fee as outlined in 201 KAR 9:151, Section 2(1) and (2).

(c) In the event that the applicant meets all the requirements for certification and successfully completes the paramedic certification examination, he shall be certified for a period of two (2) years from the date of issuance of the certificate;

(d) If at any time during which the applicant is authorized to perform as a paramedic graduate, the provider's medical director advises the committee that the applicant's performance is unsatisfactory, upon due process, the committee may revoke the paramedic

graduate status and the applicant shall not be permitted to participate in the paramedic certification examination;

(e) Examination process. An out-of-state challenge applicant granted paramedic graduate status shall be subject to the testing procedures outlined in 201 KAR 9:121, Section 4(2)(a), (3)(a) and (b) of this regulation;

(f) Failure to comply with the requirements for certification of paramedics from other states shall not prohibit an applicant from making subsequent application to a paramedic training course approved by the board.

Section 3. Temporary Certificate. (1) The committee shall review each application on an individual basis and at its discretion grant the applicant a temporary certificate to function as a certified paramedic in the Commonwealth of Kentucky.

(2) Requirements. The applicant shall comply with Section 1(1) through (15) of this regulation.

(3) Authority to issue temporary certificate.

(a) The Executive Director of the Kentucky Board of Medical Licensure upon the recommendation of the Paramedic Advisory Committee shall have the authority to issue a temporary certificate for a period not to exceed six (6) months.

(b) The Executive Director of the Kentucky Board of Medical Licensure upon the recommendation of the paramedic advisory committee shall have the authority to revoke a temporary certificate.

(4) Examination process.

(a) The individual issued a temporary certificate shall sit for the first available paramedic certification examination offered.

(b) If the applicant fails only two (2) sections of the examination process, he will be allowed a retest offered approximately thirty (30) days later, or as scheduled by the board. Failure of this retest will result in the revocation of the temporary certificate and the applicant will be placed on paramedic graduate status for a period not to exceed six (6) months. The applicant shall then take the next regularly scheduled paramedic certification examination. At that testing, the applicant who fails only two (2) sections of the examination process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board. Failure to successfully complete all aspects of the retesting process at that time will result in the paramedic graduate status being terminated and the individual shall be required to take a board approved paramedic training program in order to be eligible for further testing.

(c) If the applicant fails three (3) or more sections of the board examination, he will be rescheduled for the next board examination in approximately six (6) months. The temporary certificate shall be revoked and the individual will be placed on paramedic graduate status for a period not to exceed six (6) months. At that testing, the applicant who fails only two (2) sections of the examination process will be allowed a retest of the section(s) failed in approximately thirty (30) days or as scheduled by the board. Failure to successfully complete all aspects of the retesting process at that time will result in the paramedic graduate status being terminated and the individual shall be required to take a board approved paramedic training program in order to be eligible for further testing.

(d) Failure to comply with the requirements for certification of paramedics from other states shall not prohibit an applicant from making subsequent application for a paramedic training course approved by the board.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All applicants for paramedic certification from another state or those applicants seeking a temporary certificate or graduate paramedic status.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain the same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees to remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation contains several oversights from previous regulation which are no longer needed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed to eliminate language from previous regulation.

TIERING: Is tiering applied? No. This requirement shall pertain to all paramedics of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:141. Denial, revocation and suspension of certificate.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)
STATUTORY AUTHORITY: KRS 311.654
NECESSITY AND FUNCTION: KRS 311.654 directs the Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to establish procedures for taking disciplinary action against certified paramedics, or paramedic applicant.

Section 1. Denial, Revocation, and Suspension of Certificates. The board may deny, revoke or suspend the certificate of any person who:

(1) Has engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(2) Becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);

(3) Becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);

(4) Develops such physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public;

(5) Fails to comply with any regulation of the board relating to the certification of paramedics.

(6) Knowingly makes or presents, or causes to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other thing, in connection with an application for a certificate;

(7) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion or conspiracy in connection with an examination for a certificate;

(8) Has been convicted, including a nolo contendere plea, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor, under such laws;

(9) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession;

(10) Knowingly employed, as a certified paramedic in the practice of his profession, in this state, any person not duly licensed or otherwise aided, assisted or abetted the unlawful practice of any healing art;

(11) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any practice which regulates the functions of a paramedic or any regulation promulgated by the board under KRS 311.654 or any other valid regulation of the board;

(12) Violated any order of suspension, or the terms or conditions of any order of probation, issued by the board;

(13) Performed or attempted to perform as a certified paramedic under a false or assumed name or impersonated another paramedic of a like, similar or different name;

(14) Willfully violated a confidential communication except as required by a court of law;

(15) Had his certification to practice as a paramedic in another state, territory or foreign nation revoked, suspended, restricted or limited or has been subjected to other disciplinary action by the licensing authority thereof;

(16) Been removed, suspended or expelled by any professional medical association or society when such action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311, or regulations promulgated by the board; or

(17) Been disciplined by a medical director, approved advanced life support provider, physician coordinator or course coordinator including removal, suspension, limitation of privileges, failing to renew privileges for cause, or other disciplinary action if such action was based upon what the provider or medical director found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311, or any regulation promulgated by the board.

Section 2. Hearings. The board shall furnish the certificate holder with written notice setting out the substance of each offense charged with sufficient detail to reasonably apprise such person the nature, time and place thereof. The certificate holder shall have the right to be present in person or be represented by counsel and to present evidence and to be heard in opposition to the charges which may be instituted. The board shall make a finding of fact and conclusion of law. The hearing may be conducted by a hearing officer appointed by the board. Hearings shall be conducted in accordance with 201 KAR 9:081.

ROYCE E. DAWSON, President
APPROVED BY AGENCY: November 9, 1993
FILED WITH LRC: November 10, 1993 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All paramedics and applicants for paramedic certification or those applicants seeking a temporary certificate or graduate paramedic status.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain the same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees to remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation contains several oversights from previous regulation which are no longer needed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed to eliminate language from previous regulation.

TIERING: Is tiering applied? No. This requirement shall pertain to all paramedics of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:151. Contracts for support services; establish a fee schedule; and establish a Paramedic Advisory Committee.

RELATES TO: KRS 311.650 to 311.658, 311.990(18)

STATUTORY AUTHORITY: KRS Chapter 13A, 311.654, 311.656

NECESSITY AND FUNCTION: KRS 311.654 directs the Board of Medical Licensure to adopt rules and regulations relating to paramedics. The function of this regulation is to authorize contracts for support services; establish a fee schedule; and to establish a Paramedic Advisory Committee.

Section 1. Contract for Support Services. The board may contract with the Cabinet for Human Resources for services as may be necessary to implement the provisions of these regulations, subject to the approval of the board.

Section 2. Fees. The following schedule of fees is established pursuant to KRS 311.656:

(1) Certification examination application fee: $10;

(2) Certification examination fee: $45;

(3) Recertification [~~Certification~~] examination fee: $35;

(4) Fee for duplicate certificate: $10;

(5) Training course application fee: $100;

(6) Certification examination retest [~~test~~] fee: $45 [~~30~~];

(7) Recertification examination retest fee: $15;

(8) Temporary certificate: $25;

(9) Certification application late penalty: $25;

(10) Recertification application late penalty: $25.

Section 3. Paramedic Advisory Committee. (1) A Paramedic Advisory Committee appointed by the board shall consist of the following members appointed for a term of three (3) years:

(a) Four (4) physicians.

(b) One (1) emergency department nurse.

(c) Three (3) certified paramedics, one of which shall be an EMT instructor.

(d) One (1) paramedic instructor/coordinator.

(e) One (1) advanced life support provider.

(f) One (1) consumer.

(g) The director of the EMS Branch of the Cabinet for Human Resources or his designee shall serve as an ex officio member.

(2) The duties of the committee shall be to advise the board on matters pertaining to paramedics.

Section 4. Attendance. Failure by any committee member to attend three (3) consecutive meetings may be cause for removal from the committee.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 10, 1993 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All paramedics and applicants for paramedic certification and those applicants seeking a temporary certificate or graduate paramedic status.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs or savings - costs to remain the same.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): See 1(a) above.

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for applicants.

(2) Effects on the promulgating administrative body: No effect on board anticipated.

(a) Direct and indirect costs or savings: No direct or indirect costs or savings. Costs to remain the same.

1. First year: None anticipated.

2. Continuing costs or savings: None anticipated.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements to remain the same.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated; fees to remain the same.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was leaving the regulation as is; however, as currently drafted, the regulation contains several oversights from previous regulation which are no longer needed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

(6) Any additional information or comments: The board feels that these small "housekeeping" changes are needed to eliminate language from previous regulation.

TIERING: Is tiering applied? No. This requirement shall pertain to all paramedics of the board. There is no valid reason to impose varying requirements.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:175. Physician assistants; certification and supervision.

RELATES TO: KRS 311.565

STATUTORY AUTHORITY: KRS 311.565(22)

NECESSITY AND FUNCTION: It is the purpose of this regulation to promote the efficient and effective utilization of the skills of physicians by allowing them to delegate health care tasks to qualified physician assistants and in so doing, promote, sustain and enhance the health and welfare of the people of the Commonwealth.

Section 1. Definitions. As used in this regulation:

(1) "Physician assistant" means a person who has successfully completed an approved program and an approved examination, and who is certified by the board to assist a registered physician in the provision of medical care under the physician's supervision; the physician assistant is not an independent practitioner of the healing arts but only an adjunct to his or her supervising physician;

(2) "Anesthesia (or anesthesiology) assistant" means a physician assistant who assists in the provision of general or regional anesthesia;

(3) "Board" means the Kentucky Board of Medical Licensure;

(4) "Supervising physician" means a physician currently licensed to practice medicine in the Commonwealth who has been approved by the board to supervise physician assistants for whom the supervising physician takes responsibility;

(5) "Advisory committee" means the committee appointed by the board to advise the board on all matters related to physician assistants;

(6) "Approved program" means a program for the education and training of physician assistants which meets standards acceptable to the board;

(7) "Supervision" means control and direction of the services of physician assistants by their supervising physicians;

(8) "Approved examination" means an examination to test the knowledge and skills of physician assistants which meets standards acceptable to the board;

(9) "Certificate" means the board's official documentary authorization allowing a physician assistant to practice in the Commonwealth for the time specified; and

(10) "Trainee" means a person who is currently enrolled in an approved program for the training of physician assistants.

Section 2. Certification of Physician Assistants. (1) To be certified by the board as a physician assistant, a person must:

(a) Submit a completed application with the required fee;

(b) Be of good character and reputation;

(c) Be a graduate of an approved program;

(d) Have passed an examination approved by the board within three (3) attempts.

(2) If grounds for denial of certification do not exist, a temporary certificate may be issued by the board's executive director to a physician assistant after graduation from an approved program and prior to his taking the first available approved examination after graduation. This temporary certificate shall enable the holder to practice as a certified physician assistant pursuant to 201 KAR 9:175 only under the direct supervision of a supervising physician at the same practice location. The holder of this temporary certificate shall take the first available approved examination after graduation. If the holder receives a passing score on this examination, the temporary certificate shall be effective until the board approves the holder for permanent certification. If the holder receives a failing score, or fails to take the first available approved examination after graduation, the temporary certificate shall automatically expire. This temporary certificate shall not be renewed or reissued subsequent to expiration or cancellation. The executive director may also issue a temporary certificate to an applicant who otherwise meets all requirements of 201 KAR 9:175, Section 2(1), said temporary certificate remaining in effect until the board approves the holder for permanent certification. This temporary certificate shall allow the applicant to practice as a physician assistant pursuant to 201 KAR 9:175, Section 6. However, under no circumstances shall this temporary certificate remain in effect for longer than six (6) months and said temporary certificate shall not be renewable. Any temporary certificate may be cancelled at any time, without a hearing, for reasons deemed sufficient to the executive director, and who shall cancel it immediately upon direction by the board or the board's physician assistant advisory committee or upon the board's denial of the holder's application for permanent certification. When the executive director cancels a temporary certificate, he shall promptly notify, by certified United States mail, the holder of the temporary certificate, at his last known address as reflected by the files of the board, and the temporary certificate shall become terminated and of no further force and effect upon receipt of said notice.

(3) Physician assistants duly authorized to practice in other states and in good standing may apply for certification by endorsement from the state of their original certification if the endorsing state has standards substantially equivalent to those of the Commonwealth.

(4) Certification shall be renewed on or before July 1, 1989, and thereafter biennially according to the procedure established by the executive director. In conjunction with the renewal of his/her certification, the physician assistant shall provide evidence of having completed in the previous two (2) years a minimum of 100 hours of continuing education accepted by the National Commission on Certification of Physician Assistants or the American Medical Association. In addition to this, all physician assistants shall recertify every six (6) years as required by the NCCPA, unless they are not eligible because they hold physician assistant certification approved by the board pursuant to 201 KAR 9:175, Section 6.

Section 3. Approved Examination. The following examinations are approved by the board:

(1) The examination of the National Commission on Certification of Physician Assistants.

(2) The official certification examination of any state if the board determines the examination to be an adequate measure of physician assistant competency.

(3) Any other formally administered examination if the board determines, upon review of proof provided by the applicant, that the examination is substantially equivalent to the examination of the National Commission on Certification of Physician Assistants.

Section 4. Approved Programs. (1) The following programs are approved by the board:

(a) Programs that are accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association (CAHEA) and that provide interdisciplinary training in at least the

following areas: family medicine, internal medicine, surgery, pediatrics, psychiatry, and obstetrics/gynecology; and

(b) Any other training program if the board determines, upon review of proof submitted by the applicant, that the training received was substantially equivalent to that received in a program as described in paragraph (a) of this subsection.

(2) Programs specifically designed to train the individual to assist in the provision of general or regional anesthesia must be accredited by CAHEA.

(3) Trainees enrolled in approved programs shall be under the supervision of the program which shall be responsible for their services. Trainees shall be bound by the same practice limitations imposed upon physician assistants generally, but will not be considered to be practicing without authorization while enrolled in the program.

Section 5. Physician Assistant Scope of Practice. (1) A physician assistant may perform any and all medical services that are within the scope of training received in an approved program and which are also within the scope of the supervising physician's practice as designated by the specialty code in the most current revision of the Kentucky Medical Directory. The physician assistant shall not make a definitive diagnosis or prescribe or employ any treatment modality independent of the supervising physician. However, A physician assistant may, without specific approval, initiate evaluation and treatment in emergency situations.

(2) A physician assistant shall not administer or monitor general or regional anesthesia unless such individual satisfies the applicable requirements of Section 6 of this regulation.

(3) A physician assistant may render services in the offices or clinics of the supervising physician, or in hospitals and other licensed health care facilities. However, physician assistants shall not render services in these facilities without the express written permission of the respective facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.

(4) Neither the physician assistant nor the supervising physician shall require any individual or entity to perform any act relative to the provision of services by the physician assistant that the individual or entity is specifically forbidden to perform pursuant to duly promulgated law.

Section 6. Physician Assistants Practicing as Anesthesia (or Anesthesiology) Assistants. (1) Any physician assistant practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 may continue to so practice provided:

(a) That such individual has complied with all the practice requirements and conditions of Sections 2, 3, 4(2), and 5 of this regulation;

(b) That such individual is a graduate of a program specifically designed to train the individual to administer general or regional anesthesia which is accredited by CAHEA;

(c) That such individual is only employed by a supervising physician who has postgraduate training in anesthesiology from an anesthesiology program accredited by the Accreditation Council for Graduate Medical Education (ACGME); and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician is physically present in the operating room during induction, and thereafter physically present in the operating suite and not concurrently performing any other anesthesia procedure which would prevent the supervising physician's immediate physical presence in the operating room where the anesthesia procedure is being performed.

(2) Any physician assistant not already practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 must meet the following requirements:

(a) Such individual shall be a graduate of an approved program as defined in Section 4(1)(a) of this regulation which is of four (4) years duration, and, in addition to such training, be a graduate of a two (2) year program specifically designed to train the individual to assist in the provision of general and regional anesthesia, which consists of specialized academic and clinical training in anesthesia, and which is accredited by CAHEA;

(b) Such individual shall have complied with all of the practice requirements and conditions of Sections 2, 3, 4, and 5 of this regulation;

(c) Such individual shall only be employed by a supervising physician who is a board certified anesthesiologist; and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician, who must be a board certified anesthesiologist, is physically present in the operating room during induction and emergence, and thereafter physically present in the operating suite and not concurrently performing any other clinical procedure.

Section 7. Approval of Supervising Physicians. (1) To seek approval by the board as a supervising physician, a physician must:

(a) Be currently licensed in good standing and primarily practicing in the Commonwealth;

(b) Submit a completed application with the required fee.

(2) In addition to other information the board's executive director may deem appropriate, the supervising physician shall, briefly, on the face of the application:

(a) Describe the nature of his/her practice;

(b) Describe the responsibilities the physician wishes the physician assistant to assume;

(c) Describe the means by which the physician will maintain a line of communication with the physician assistant when the two (2) are not in the same location; and

(d) Denote the name, address and area of practice of one (1) or more alternate physicians who agree in writing to accept the responsibility of supervising the physician assistant in the supervising physician's absence.

(3) A physician shall not supervise a physician assistant without being approved by the board. The board may impose restrictions on the scope of practice of a particular physician assistant or on the methods of supervision employed by the supervising physician as it deems appropriate. Physicians must obtain specific approval for each physician assistant they wish to supervise and the board will not approve any physician to supervise more than two (2) physician assistants at any one (1) time.

Section 8. Duties of Supervising Physicians. A supervising physician shall:

(1) Restrict the services provided by the physician assistant the physician supervises to those services within the limitations of the physician assistant's scope of practice as set forth in Section 5 of this regulation and, as applicable, Section 6 of this regulation, and as may be specifically limited by the board;

(2) Prohibit physician assistants from prescribing or dispensing controlled substances or other drugs;

(3) Inform all patients with whom the physician assistant comes in contact of the status of the physician assistant;

(4) Post a notice in all offices or clinics where the physician assistant may practice stating that a physician assistant practices on the premises;

(5) Require physician assistants to wear a name tag or other identification clearly stating that the person is a "physician assistant - certified";

(6) Prohibit the physician assistant from independently billing any patient or other payor for services rendered by the physician assistant;

(7) Negotiate with the medical staff and/or governing body of any hospital, long-term care facility or institution to establish and limit the scope of practice of the physician assistant;

(8) Not require a physician assistant to perform services or other acts that the physician assistant feels incapable of carrying out safely and properly;

(9) Survey critically and biennially the performance of the physician assistant under the physician's supervision as to reliability, accountability, fund of medical knowledge and recommend to the committee, approval or disapproval of other physician assistant's certification, including evidence of continuing certification by the National Commission on Certification of Physician Assistants. This critical survey process shall be performed by the supervising physician biennially on the date of the physician assistant's original certification in the Commonwealth of Kentucky;

(10) Submit in conjunction with the physician assistant's renewal of certification a statement evidencing the physician assistant's completion of a minimum of 100 hours of continuing education as set forth in Section 2(4) of this regulation;

(11) Maintain adequate, active and continuous supervision of the physician assistant's activities to assure the physician assistant is performing as directed and in compliance with these regulations. The supervising physician shall timely sign all records of services rendered by the physician assistant as certification that the physician assistant carried out the services as delegated;

(12) Notify the board within three (3) business days if the physician assistant ceases to be under the control or in the employ of the supervising physician; and

(13) Notify the board within twenty (20) days if the supervising physician believes in good faith that the physician assistant has violated any disciplinary rule set forth in this regulation.

Section 9. Supervision and Satellite Clinics. (1) The supervising physician need not be physically present at all times when the physician assistant is providing services in the physician's office or clinic so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times. Except as may be provided by this regulation or the board, the supervising physician need not be present in a hospital or other licensed health care facility while the physician assistant is providing services so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times, and the facility has given specific approval for the provision of the given services by the physician assistant without the presence of the supervising physician.

(2) Any supervising physician utilizing the services of a physician assistant in an office or clinic separate and apart from the physician's primary office shall submit a specific written request to the board delineating the services to be provided by the physician assistant, the distance between the primary office and the setting in which the physician assistant is to practice and the mechanism by which the physician assistant shall have access to direct communication with the supervising physician at all times. The board may approve or disapprove such requests as it deems appropriate and may approve a request with specified limitations. Under no circumstances shall a physician assistant practice in such a setting without first having two (2) continuous years of experience in a nonsatellite setting.

Section 10. Discipline of Physician Assistants. The board may revoke, suspend, deny, decline to renew, limit or restrict the certificate of a physician assistant, or may reprimand or place a physician assistant on probation for no more than five (5) years under conditions the board deems appropriate, upon proof that the physician assistant has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other document in connection with an application for certification;

(2) Practiced, or aided or abetted in the practice, of fraud, forgery, deception, collusion or conspiracy in connection with an examination for certification;

(3) Been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under such laws;

(4) Become addicted to or an abuser of alcohol, drugs or any illegal substance;

(5) Developed such physical or mental disability or other condition that continued practice presents a danger to patients, the public or other health care personnel;

(6) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his/her profession;

(7) Practiced as a physician assistant outside the practice of the designated supervising physician;

(8) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art, including the practice of physician assistants;

(9) Willfully violated a confidential communication;

(10) Had a physician assistant certificate of any other state, territory, or foreign nation revoked, suspended, restricted, limited or subject to other disciplinary action;

(11) Performed the services of a physician assistant in an unprofessional, incompetent, grossly negligent or chronically negligent manner;

(12) Exceeded the authority delegated by the supervising physician;

(13) Exceeded the scope of practice duly established by the governing authority of any hospital or other licensed health care facility;

(14) Been removed, suspended, expelled or placed on probation by any health care facility or professional society for what was found to be unprofessional conduct, incompetence, negligence or violation of any provision of this regulation;

(15) Violated any applicable provision of regulations regarding physician assistant practice;

(16) Violated any term of probation or other discipline imposed by the board;

(17) Failed to complete the required number of hours of approved continuing education; or

(18) Performed any act as a physician assistant without having a designated supervising physician.

Section 11. Discipline of Supervising Physicians. Failure of a physician to obtain approval as a supervising physician, or failure of a supervising physician to observe applicable responsibilities established by regulations promulgated by the board regarding physician assistants, shall be considered unprofessional conduct and the physician may be proceeded against pursuant to the board's rules regarding physician discipline. In addition to other discipline, the board may revoke, suspend, restrict, or place on probation the supervising physician's right to supervise a physician assistant.

Section 12. Physician Assistant Advisory Committee. (1) The board shall establish a physician assistant advisory committee consisting of nine (9) members, four (4) of whom shall be physician assistants from (as practicable) different regions of the Commonwealth, two (2) supervising physicians, one (1) resident of the Commonwealth who is not associated with or financially interested in the health care business, one (1) advanced registered nurse practitioner who shall be selected from a list of three (3) nominees submitted by the Kentucky Board of Nursing and who shall be licensed in good standing in the Commonwealth, and one (1) member

of the board. The members of the committee shall hold office for terms of three (3) years and until their successors are appointed and qualified, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, four (4) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The terms of all members of the committee shall expire on August 31st of the last year of their respective terms.

(2) The committee shall hold meetings at least semiannually and more often as necessary, to review and make recommendations to the board regarding:

(a) Applications of physician assistants and supervising physicians;

(b) Statutes and regulations; and

(c) Any other matter relating to the practice of physician assistants.

(3) The committee shall review all grievances relating to physician assistants. The board's investigational powers relating to physicians shall apply equally to physician assistants. Upon review of any grievance, the committee shall make a recommendation to the appropriate inquiry panel. Disciplinary proceedings against physician assistants shall be conducted in the same manner as proceedings against physicians and physician assistants shall have the same right to judicial review enjoyed by physicians. The board may temporarily suspend or restrict a physician assistant's certification during the pendency of a proceeding and may order a physician assistant to undergo physical or mental examination in accordance with the procedures set forth in KRS 311.592 and KRS 311.599, respectively.

Section 13. Emergency Permits. (1) Upon satisfactory completion of all forms, a physician assistant certified in good standing in another state or Canadian province may obtain an emergency permit to practice as a physician assistant in the Commonwealth for a period not to exceed thirty (30) days when in the executive director's opinion, based on verifiable information, the physician assistant satisfies the requirements for regular certification pursuant to 201 KAR 9:175, Section 2, and an actual medical emergency exists. A medical emergency shall be considered to exist if, in the executive director's opinion, a real and substantial threat to public health or the health of an individual exists which cannot be cured except upon the issuance of the emergency permit. The emergency permit may not be renewed or reissued and shall be immediately cancelled if the medical emergency ceases to exist prior to the passage of thirty (30) days from issuance. An emergency permit may be cancelled by the executive director without a prior hearing when in the executive director's opinion, based upon reasonable cause, the continuance of the permit would not be in the best interest of the Commonwealth. An emergency permit does not enable a physician assistant to practice beyond the geographical area, the scope of practice encompassed by the medical emergency, or without the supervision of a supervising physician.

(2) Upon satisfactory completion of all forms, a physician assistant certified in good standing to practice and a physician assistant in the Commonwealth of Kentucky may obtain an emergency permit to practice under an additional supervising physician for a period not to exceed thirty (30) days when in the executive director's opinion, based on verifiable information, the physician assistant satisfies the requirements for regular certification pursuant to 201 KAR 9:175, Section 2, and an actual medical emergency exists. A medical emergency shall be considered to exist if, in the executive director's opinion, a real and substantial threat to public health or the health of an individual exists which cannot be cured except upon the issuance of the emergency permit. The emergency permit may not be renewed or reissued and shall be immediately cancelled if the medical emergency ceases to exist prior to the passage of thirty (30) days from issuance. An emergency permit may be cancelled by the executive director without a prior hearing when in the executive director's opinion, based upon reasonable cause, the continuance of the permit would not be in the best interest of the Commonwealth. An emergency permit does not enable a physician assistant to practice beyond the geographical area, the scope of practice encompassed by the medical emergency, or without the supervision of a supervising physician.

ROYCE E. DAWSON, President

APPROVED BY AGENCY: November 9, 1993

FILED WITH LRC: November 11, 1993 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Tuesday, December 21, 1993, at 10 a.m., eastern time, at the new offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, by December 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 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 attend the hearing or written comments to: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, Hurstbourne Office Park, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046.

REGULATORY IMPACT ANALYSIS

Contact Person: C. William Schmidt

(1) Type and number of entities affected: All physicians who are licensed to practice medicine in the Commonwealth of Kentucky.

(a) Direct and indirect costs or savings to those affected: Improved efficiency in the utilization of physician assistants.

1. First year: See 1(a) above.

2. Continuing costs or savings: See 1(a) above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: N/A

(2) Effects on the promulgating administrative body: Paperwork and staff workload will increase.

(a) Direct and indirect costs or savings: Slight increase in costs to the promulgating administrative body.

1. First year: See 3(2)(a) above.

2. Continuing costs or savings: See 3(2)(a) above.

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: Slight increase in paperwork.

(3) Assessment of anticipated effect on state and local revenues: No changes anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative considered was having no availability of physician assistants in emergency situations. The board feels that the public and profession need the availability of PA's as stated above.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Board is not aware of any statute, regulation or government policy which is in conflict or is duplicated by this proposed amendment.

(a) Necessity of proposed regulation if in conflict: N/A - see (5) above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A - see (5) above.

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

TIERING: Is tiering applied? No. This requirement shall pertain to all licensees of the board. There is no valid reason to impose varying requirements.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:220. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This administrative regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource. The framework of this administrative regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this administrative regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit or an anchored, stationary, or drifting boat from which hunting occurs.

(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.

(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.

(4) "Commercial guide" means any individual who accepts monetary considerations for receipt of services in assisting another individual or group in the taking of fish or wildlife.

(5) "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(6) "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. Seasons and Zones for Gun, Archery and Falconry. The following zone requirements shall apply to all migratory birds listed in this section.

(1) Ducks, coots and mergansers:

(a) Eastern duck zone: November 25 [~~26~~] through November 28 [~~29~~] and December 26 [~~23~~] through January 20 [~~17~~] east of a boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U. S. Bypass 60, north along U.S. 231 to the Indiana border.

(b) Western duck zone: November 25 [~~26~~] through November 28 [~~29~~] and December 11 [~~16~~] through January 5 [~~10~~]. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection.

(c) Falconry (eastern and western duck zones): November 5 [~~3~~] through January 31.

(2) Geese.

(a) [~~Eastern goose zone: December 13 through January 31, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to the Henderson County line then south, east and northerly along the Henderson County line to the Indiana border.~~

~~(b)~~] Western goose zone: December 11 [~~November 26~~] through January 30 [~~31~~], unless harvest quotas shall be met as established in subparagraphs 1 through 4 of this paragraph. This zone consists of the area to the west of the boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, east on I-24 to US 641, north on US 641 to US 60, northeast on US 60 to the Henderson County Line then south, east and northerly along the Henderson County Line to the Indiana border [~~described in paragraph (a) of this subsection~~]. For the purpose of controlling the goose harvest, the western goose zone is subdivided into the Ballard reporting area and associated counties and the Henderson-Union reporting area and associated counties.

1. Ballard reporting area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi River to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe.

a. If the department determines that the quota of 11,400 [~~14,600~~] Canada geese will be filled prior to January 30 [~~31~~], the goose hunting season shall close in the Ballard reporting area.

b. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

2. Counties associated with the Ballard reporting area. The counties associated with the Ballard reporting area are those portions of Ballard (excluding Ballard reporting area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the western goose zone, shall remain open for seven (7) days after the closure of the Ballard reporting area or until January 30 [~~31~~], whichever occurs first.

3. Henderson-Union reporting area. This reporting area includes Henderson County and that portion of Union County within the western goose zone.

a. If the department determines that the quota of 3,350 [~~4,300~~] Canada geese will be filled prior to January 30 [~~31~~], the goose hunting season shall close in the Henderson-Union reporting area.

b. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

4. Counties associated with the Henderson-Union reporting area. The counties associated with the Henderson-Union reporting area are those portions of Lyon, Crittenden and Livingston counties in the western goose zone shall remain open for seven (7) days after the closure of the Henderson-Union reporting area or until January 30 [~~31~~], whichever occurs first.

(b) Pennyroyal/Coal Field Goose Zone: Canada geese December 11 through January 14, Goose species other than Canada geese December 11 through January 31. This zone comprises the region east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, east on I-24 to US 641, north on US 641 to US 60, northeast on US 60 to the Henderson County line then south, east and northerly along the Henderson County line to the Indiana border; and west of the boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along US Bypass 60, north along 231 to the Indiana border.

(c) Remainder of the state: December 13 through January 31, east of a boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along US Bypass 60, north along 231 to the Indiana border.

(d) [~~(c)~~] Falconry (statewide) [~~(eastern and western goose zones)~~]: November 5 [~~3~~] through January 31.

Section 3. Limits for Gun, Archery and Falconry. The following bag and possession limits shall apply to all migratory birds listed in this section.

(1) Gun and archery.

(a) Ducks. The daily bag limit shall be three (3) and no more than two (2) mallards (no more than one (1) hen mallard), two (2) wood ducks, one (1) black duck, one (1) redhead, and one (1) pintail of either sex. Canvasbacks shall not be taken. The possession limit shall be double the daily bag.

(b) Coots. The daily bag limit shall be fifteen (15) and the possession limit shall be thirty (30).

(c) Mergansers. The daily bag limit shall be five (5) of which no more than one (1) shall be a hooded merganser. Possession limit shall be double the daily bag limit.

(d) Geese: The bag limit shall be seven (7) with no more than two (2) Canada geese and two (2) white-fronted geese. The possession limit shall be double the daily bag limit.

(2) Falconry. The bag and possession limits are three (3) and six (6) respectively, of any legal species listed in this administrative regulation, singly or in aggregate.

Section 4. Except as provided in Section 7 of this administrative regulation, shooting hours for migratory species shall be permitted one-half (1/2) hour before sunrise to sunset.

Section 5. (1) Pursuant to 301 KAR 2:044, Section 7(2)(a), the possession and use of lead shot shall be prohibited for the taking of ducks, geese, coots and mergansers.

(2) Steel shot larger than F shall not be in a hunter's possession while hunting.

(3) Beginning July 1, 1994, no shotshells longer than three and one-half (3 1/2) inches or shot size larger than T shall not be used or in possession while hunting species listed in this administrative regulation.

Section 6. Wildlife Management Area Blind Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 7 of this administrative regulation.

(1) Permanent blinds shall not be permitted. Decoys and temporary blinds shall be removed at the end of each hunting day.

(2) Blinds shall not be established less than 200 yards from any other blind or waterfowl refuge areas.

(3) No more than four (4) persons shall occupy a single blind at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this administrative regulation.

Section 7. Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below. Pit and blind restrictions described in this section and Section 10 of this administrative regulation shall not apply to periods of the falconry season as described in Section 4 of this regulation that do not coincide with waterfowl gun hunting seasons.

(1) Ballard Wildlife Management Area, except the Mitchell [~~Miller~~] Tract, located in Ballard County.

(a) Species, seasons and bag limits.

1. Geese: December 14 [~~8~~] through January 30 [~~31~~] or until the Ballard Reporting Area quota is reached.

2. Ducks, coots and mergansers: December 14 [~~16~~] through January 5 [~~10~~].

3. Daily bag limits.

a. Canada geese. The daily bag limit on Ballard Wildlife Management Area is two (2) per day.

b. Other geese: same as state bag limits;

c. Ducks, coots and mergansers. Same as state bag limits.

4. No hunting is permitted on Sundays, Mondays, Christmas and New Year's day.

5. No more than three (3) persons shall occupy a single blind at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. Any hunter under the age of eighteen (18) years shall be accompanied by an adult. Any person whose transportation to and from blinds is furnished by the department shall have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours for migratory species listed in this administrative regulation shall be permitted one-half (1/2) hour before sunrise to 12 noon.

(d) The Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of Ballard Wildlife Management Area shall be [~~is~~] closed to all species listed in this regulation from October 15 through March 15.

(2) Swan Lake Wildlife Management Area located in Ballard County.

[~~(a) Closed areas.~~] Swan Lake, adjacent wetlands and uplands as marked by signs shall be [~~are~~] closed to hunting, fishing and trespass from October 15 through March 15 as described in 301 KAR 4:050.

[~~(b) Open areas. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this administrative regulation.~~]

(3) Paintsville Lake Wildlife Management Area in Johnson and Morgan counties and Dewey Lake wildlife Management Area in Floyd County shall be [~~are~~] open to hunting of all legal species listed in this administrative regulation.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Long Creek Pond, the eastern one-third (1/3) of Smith Bay, and the eastern two-thirds (2/3) of Duncan Bay shall be [~~are~~] closed to all activity from November 1 through March 15 as indicated by signs and buoys. The Environmental Education Center and Energy Lake shall be [~~are~~] closed to hunting of all species listed in this administrative regulation.

(b) LBL permit. An annual LBL hunting permit shall be required for hunting of all legal species listed in this regulation on all shoreline areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section. Hunting of any species listed in this administrative regulation shall not be permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall be removed at the end of each hunting day.

(5) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall be closed to all hunting, fishing, boating and molesting of all species listed in this administrative regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed through March 15 as marked by buoys and signs. Boating shall be allowed but hunting shall be prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 from October 15 through March 15.

(b) Blinds. Permanent blinds shall remain within ten (10) yards of the assigned numbered blind marker within the two (2) areas

described as follows:

1. Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek;

2. Beginning at the Pryor's Creek Light extending south along the western shore of Barkley Lake to the boat ramp at the end of Land Between the Lakes Road 204 thence to the west side of the Cumberland River Channel, marked with buoys, to river mile 73.5, thence north along the west side of the Cumberland River channel, marked with buoys, to the Pryor Creek Light. All other blinds within this described area shall be temporary.

(6) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Hunting shall be permitted only from permanent blinds constructed by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. Hunting shall be allowed from permanent blinds constructed by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(c) Shooting hours for migratory species listed in this administrative regulation shall be permitted from one-half (1/2) hour before sunrise to 2 p.m.

(d) When the Ohio River reaches a level that requires boat access to the units, hunting shall be allowed from boats spaced 200 yards apart, without regard to the department blinds.

(e) Sauerheber Unit.

1. On the Crenshaw and Duncan Tracts, hunting shall be by advanced application or as otherwise authorized, waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. [~~Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours.~~]

2. Waterfowl hunting only shall be allowed on the Crenshaw and Duncan II tracts during the waterfowl season. The Crenshaw and Duncan II tracts shall be closed to all other hunting from October 15 through March 15.

3. Waterfowl hunters shall have no more than fifteen (15) shells in their possession when hunting on the Crenshaw and Duncan tracts.

4. The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker four (4) and six (6) on state road 268 and bounded by the Ohio River on the north and Tram Road on the east shall be closed to all hunting, fishing, boating and trespassing from October 15 through March 15.

(7) Ohio River Waterfowl Refuge located in Livingston County shall be closed to all hunting and the islands closed to all trespass from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 [~~and Stewart Island~~].

(8) Westvaco Wildlife Management Area located in Carlisle and Hickman Counties:

(a) The area posted by signs known as and located as follows: [~~s south of Highway 1217 (also known as Fish Lake or Lower River Road), the Brown and Morgan tracts east of Highway 1217, the Shadoan Tract north of the Brown Tract and~~] the portion [~~of the Jackson Tract~~] south of the Westvaco access road and [~~as~~] posted by signs, shall be closed from November 1 [~~October 15~~], through March 15.

(b) Westvaco permit. An annual Westvaco Hunting Permit shall be] required for hunting all legal species on the Westvaco Wildlife Management Area.

(9) West-central Kentucky. The region contained within the boundaries beginning at the northwest corner; junction of US Hwy 41A and the Webster-Hopkins County line, then southeast along US Hwy 41A to KY Hwy 85, east on KY 85 to KY Hwy 70, southeast on KY Hwy 70 to the Muhlenberg County line, north, and east along the Muhlenberg County line to the Green River, north along the Green River to Rough River, upstream on Rough River to the Ohio-Grayson County line, south along the Ohio-Grayson County Line to the Butler County Line, southeast along the Butler County line to KY Hwy 79, southwest along KY Hwy 79 to KY Hwy 70, west along KY Hwy 70 to the Muhlenberg-Ohio-Butler County lines (near Rochester), then south, west, and north along the Muhlenberg County line to the corner of the Muhlenberg-Christian-Hopkins County lines, west along the Hopkins-Christian County line to KY Hwy 109, north along Hwy 109 to KY Hwy 814, northeast along KY Hwy 814 to the Webster County Line:

(a) Canada geese: January 8 through January 14;

(b) Bag limit: Two (2) Canada geese per day. Possession limit shall be twice the daily bag limit;

(c) Shooting hours for Canada geese shall be one-half (1/2) hour before sunrise to sunset;

(d) All persons hunting Canada geese in the West-central Kentucky Special hunt region and who are required to have state and federal waterfowl stamps shall also have in their possession while hunting Canada geese a special Canada goose hunting permit for the region;

(e) Permit includes a Canada goose harvest survey that shall be filled out and returned to the department by January 21, 1994, regardless of whether any Canada geese are harvested. Permit holders who fail to return their completed survey may not be issued a permit the following year.

(10) Peabody Wildlife Management Area located in Muhlenburg and Ohio counties. The areas posted by signs known as and located as follows are posted as wildlife refuges and shall be closed to all unauthorized activities from October 15 through March 15 except those lakes listed in 301 KAR 4:100 are closed until July 1:

(a) Gibralter Mine, the region east of Rockport Road, south of the Western Kentucky Parkway, north, east and west of Pond Creek, south and east of the P&M Haul Road and as posted by signs;

(b) Sinclair Mine, the region east of the railroad tracks, south of the haul road, west and north as posted by signs;

(c) Homestead, the region south, east and west of the haul road, north of the Green River as posted by signs;

(11) Higginson-Henry Wildlife Management Area located in Union County. The region north of KY Hwy 56, west of Anderson Creek, south of the wildlife management area boundary, east of the wildlife management area entrance road is posted as a wildlife refuge and shall be closed to all access unless otherwise authorized.

(12) Bath, Rowan, Menifee and Morgan counties, including Cave Run Lake (except that portion of Morgan County associated with Paintsville Lake):

(a) Season and administrative regulations:

1. Canada geese: December 13 through December 19;

2. Bag limit: One (1) Canada goose per day. Possession limit shall be twice the daily bag limit;

3. Shooting hours for Canada geese in these counties (except that portion of Morgan County associated with Paintsville Lake) shall be one-half (1/2) hour before sunrise to 2 p.m.;

4. All persons hunting Canada geese in Bath, Rowan Menifee and Morgan counties (except that portion of Morgan County associated with Paintsville Lake) who are required to have state and federal waterfowl stamps shall also have in their possession while hunting Canada geese a special Canada goose hunting permit for the region;

5. Permit includes a Canada goose harvest survey that shall be filled out and returned to the department by January 21, 1994, regardless of whether any Canada geese are harvested. Permit holders who fail to return their completed survey may not be issued

a permit the following year;

6. The region within the boundaries of KY Hwy 801 north to KY Hwy 1274, then west along KY Hwy 1274 to KY Hwy 36, southwest along KY Hwy 36 to KY Hwy 211, south along KY Hwy 211 to US Hwy 60, then east along US Hwy 60 to KY Hwy 801 shall be closed to goose hunting;

7. Seasons for geese other than Canada geese shall be closed;

(b) Breech and muzzle-loading shotguns may be used for duck hunting along the shoreline portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(13) [~~(9)~~] Hunting of all species listed in this administrative regulation is not permitted on the following areas:

(a) The portion of Grayson Wildlife Management Area located in Carter and Elliott counties: within the no wake zone at the dam site marina, from the shores of Camp Webb and the state park and on Deer Creek Fork of Grayson Lake. All other portions shall be [~~are~~] open.

(b) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(c) Cane Creek Wildlife Management Area located in Laurel County.

(d) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(e) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(f) Mill Creek Wildlife Management Area located in Jackson County.

(g) Beech Creek Wildlife Management Area located in Clay County.

[~~(10) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, shall be closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shore line portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.~~]

(14) [~~(11) Ohio County south of Rough River, Muhlenburg County, except for the portion south of US Highway 62 and west of State Route 181, Butler County west of State Route 79, Hopkins County north of State Route 70, south of US Highway 41A, east of State Route 614 and State Route 109, and south of the Western Kentucky Parkway,~~] Christian County north of Highway 68/80 [~~State Route 80~~] shall be closed to Canada goose hunting. Bell County south of Route 119 and east of Route 25E, Pulaski and McCreary Counties east of US Highway 27 and Laurel, Clay, Whitley, Perry, Knott and Breathitt Counties shall be closed to all goose hunting. [~~In addition all designated goose refuge lakes within the western Kentucky coal fields are closed to all waterfowl hunting.~~]

(15) [~~(12)~~] Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre waterfowl refuge [~~wetland~~] designated by signs and painted boundary markers shall be closed to the public from October 15 through March 15.

(16) [~~(13)~~] Lake Cumberland, Pulaski County.

(a) Wesley Bend, the area bounded to the north, west and south by Fishing Creek and to the east by Beech Grove Road and Fishing Creek Road shall be closed to the public from October 15 through March 15.

(b) Yellowhole, the area bounded to the east and north by Fishing Creek, to the west by Fishing Creek Road and the south by Hickory Nut Road shall be closed to the public from October 15 through March 15.

(17) [~~(14)~~] Blind restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas.

(a) Permanent blinds shall be registered on a permit issued by the US Army Corps of Engineers. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall be issued for each permanent blind. Only one (1) permit shall be issued per hunter per area. Permittees who have not constructed a blind at the designated location by November 20 shall forfeit their permit.

(b) Blinds not occupied by permittees by the opening of shooting hours of any day shall be available for use by other hunters on a first come - first served basis for the remainder of that day.

(c) Permittees shall not lock blinds so as to prevent use by other hunters in the absence of the permittee.

(d) Permanent blinds shall be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved by the department. Permittees who fail to remove their blind within thirty (30) days after the close of the waterfowl season shall forfeit the opportunity to obtain a blind on this area the following year.

(e) Permittees shall be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, Paintsville Lake and Taylorsville Lake Wildlife Management Areas. Applicants for blind permits shall present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall be assigned to another applicant according to the following procedure:

1. Five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present).

2. Any forfeited blinds shall be assigned to those people in the order they were drawn.

(f) Temporary blinds shall be permitted on the above listed lakes in accordance with the administrative regulations specified under Section 6 of this administrative regulation.

(18) [~~(15)~~] Waterfowl shooting hours shall be from one-half (1/2) hour before sunrise to 2 p.m. on the following wildlife management areas: Green River in Adair and Taylor Counties, Kaler Bottoms in Graves County, Obion Creek in Hickman County, Peabody in Muhlenburg and Ohio Counties, Peal in Ballard County, Westvaco in Carlisle County and White City in Hopkins County.

(19) [~~(16)~~] Taylorsville Lake Wildlife Management Area, located in Anderson, Nelson and Spencer Counties. That portion east of Van Buren Boat Ramp as marked by buoys and signs shall be closed to all hunting, fishing, boating, and trespassing during the period from the first Monday following the quota deer hunt in November through March 1.

(20) [~~(17)~~] Fulton County shall remain open to Canada goose hunting through February 14 [~~12~~], unless closed prior to this date under the provisions of Section 2 of this regulation.

Section 8. Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt geese [~~waterfowl~~] within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area permit issued by the department shall be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall be charged for each commercial waterfowl hunting area permit. These permits shall expire at the end of waterfowl hunting season.

(b) Persons operating more than one (1) commercial waterfowl hunting area shall obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

(a) Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall obtain a free migratory goose [~~waterfowl~~] hunting area permit which shall expire at the end of waterfowl hunting season.

(b) The holder of a free migratory goose [~~waterfowl~~] hunting area permit may be the landowner, his tenant or any person to whom

these individuals have assigned exclusive control of waterfowl hunting rights or privileges, in writing, on forms provided by the department.

(c) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Ohio and Mississippi River goose [~~waterfowl~~] hunters. Persons hunting goose [~~waterfowl~~] on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall carry on their person a daily waterfowl harvest register form (G-32) provided by the department. When hunting in a party, one (1) hunter of the party may possess the waterfowl harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms. Persons desiring commercial goose [~~waterfowl~~] hunting area permits, migratory waterfowl hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson- Union Reporting Area shall apply by writing to the Sloughs Wildlife Management Area, 9956 Hwy. 268, Corydon, Kentucky 42406.

Section 9. Ballard and Henderson-Union Reporting Area Record-keeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on daily waterfowl harvest register forms (G-32) provided by the department.

(b) The permittee shall, during the goose [~~waterfowl~~] season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violation of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports these violations to a conservation officer.

(2) Migratory goose [~~waterfowl~~] hunting area permit holders.

(a) At all times during the goose [~~waterfowl~~] season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all goose [~~waterfowl~~] hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese [~~waterfowl~~] taken.

(c) The permittee shall, during the goose [~~waterfowl~~] season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and [~~waterfowl~~] harvest record to the address indicated on the form. The permittee shall hold duplicate copies of the forms for a period of two (2) months after the end of the goose [~~waterfowl~~] season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting geese [~~waterfowl~~] on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson- Union Reporting Areas shall:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of geese [~~waterfowl~~] taken.

(b) Persons hunting geese [~~waterfowl~~] on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese [~~waterfowl~~] taken.

3. Mail or hand deliver the completed original waterfowl harvest register so it is received by no later than Monday of each week, to the address indicated on the form.

Section 10. General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area.

(1) It is unlawful to hunt waterfowl except from a blind, unless waterfowl hunting is conducted in flooded, standing timber.

(2) It is unlawful to establish or use any blind within 100 yards of any other blind.

(3) It is unlawful to establish or locate any blind within fifty (50) yards of any property line.

(4) No more than five (5) persons shall occupy a single blind at the same time.

(5) A hunter shall possess only one (1) shotgun while occupying a blind.

Section 11. Waterfowl Stamp Requirements. Individuals hunting waterfowl shall possess appropriate state and federal waterfowl stamps as required by KRS 150.330 and 150.603.

C. TOM BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: August 27, 1993
FILED WITH LRC: October 22, 1993 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 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, KY. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Art Boebinger, Acting 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: C. Tom Bennett

(1) Type and number of entities affected: Approximately 14,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp, and a state duck stamp. Approximately 25 commercial waterfowl hunting area opera-

tors will be required to purchase a 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 administrative regulation would be required to possess a valid hunting license ($12.50 for residents) unless exempted by statute, a $15 migratory bird hunting and conservation stamp, and a $5.25 state duck stamp. Commercial waterfowl hunting operators will be required to purchase a $100 permit each.

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: Approximately 7,500 waterfowl hunters within the Ballard and Henderson-Union reporting areas will be required to register prior to hunting waterfowl and to report their harvest on forms provided by the department. The reporting frequency will be only half of what it has been due to a change requiring weekly rather than biweekly reporting.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, report monitoring and enforcing the proposed administrative regulation.

(a) Direct and indirect costs and savings: Primary costs are associated with enforcing the administrative regulation and administering the harvest registration zones.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this administrative regulation is $275,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Monitoring of harvest on registration forms will involve tabulation of forms submitted in the Ballard and Henderson-Union reporting areas. Permits will be issued to approximately 500 individuals and landowners.

(3) Assessment of anticipated effect on state and local revenues: Approximately 14,000 waterfowl hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items is $216 per migratory bird hunter according to the National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to 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 U.S. Fish and Wildlife Service requires that any harvest of migratory birds occur through a regulated hunting season that is held within a specific time frame. Therefore, 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 upon the wise use of renewable resources and the fact that the involved species populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. The regulated hunting alternative selected is that which will provide the most opportunity to Kentucky waterfowl hunters while affording necessary protection to the waterfowl resource.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None known.

(a) Necessity of proposed administrative regulation if in conflict: 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 administrative regulation. However, waterfowl are unevenly distributed across the state temporarily, spatially and according to species and/or population. This administrative regulation recognizes the variation in waterfowl abundance and adjusts hunting seasons accordingly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 58, No 184, Friday, September 24, 1993.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30 day season between October 1, 1993 and January 20, 1994. The state may be split into two zones with no more than two segments in each zone. The daily bag limit of ducks is 3 and may include not more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. There is a point system option in which hen mallard, black duck, pintail, redhead and hooded merganser are 100 point birds, mallard drake and wood duck are 50 point birds and all other species of ducks and mergansers are 35 points. The possession limit shall be twice the daily bag. The season on canvasbacks is closed. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit, except when the point system is chosen. Then mergansers are part of the point system. Geese: Western Zone season may extend for 66 days between September 25, 1993 and January 31, 1994, or until the harvest of 17,500 birds is taken, whichever occurs first. The daily bag limit shall be 7 geese, to include no more than 2 Canada geese and 2 white-fronted geese. Pennyroyal/Coal Field Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese. The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese between the Saturday nearest October 1, 1993 and January 31, 1994. Possession limit is twice the daily bag limit. Shooting hours shall be one-half hour before sunrise until sunset daily for all species. Falconry season for migratory birds mentioned above shall fall between September 1, 1993 and March 10, 1994 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The goose season runs for 51 days rather than 66 days due to the paucity of birds wintering in Kentucky during the early parts of the framework. Exerting hunting pressure on so few birds could jeopardize long term bird use in Kentucky. The Ballard Wildlife Management Area season is for 33 days or 28 days shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending

by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures beyond those necessary to enforce laws.

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 November [~~October~~] 15, 1993, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-15	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 (Amended 11/15/93)
KSR 09-00-21	Crime Scene Camera [~~(Amended 10/15/93)~~]
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
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority

	Over Other Inmate(s)
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-09	Smoking and No Smoking Areas for Inmates and Staff
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
KSR 16-01-03	Night Visit Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 22-00-08	Privilege Trips (Added 11/15/93)
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: November 15, 1993
FILED WITH LRC: November 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1993 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and 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: 523 employees of the Kentucky State Reformatory, 1407 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 November [~~September~~] 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 (Deleted 11/15/93)]~~
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
~~[KSP 070000-30~~	~~Therapeutic Diets (Deleted 11/15/93)]~~
KSP 090000-01	Inmate Work Programs/Safety Inspections of Inmate Work Locations
KSP 09-08-01	Searches and Preservation of Evidence
KSP 10-02-01	Special Management Units: Assignment, Classification Review and Release (Added 11/15/93)
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 (Deleted 11/15/93)]~~
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for Nonindigent Inmates with Special Court Deadlines
KSP 11-03-01	Therapeutic Diets (Amended 11/15/93) (Renumbered from 070000-30)
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 11/15/93)
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: November 15, 1993
FILED WITH LRC: November 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1993 at 9 a.m., in the Auditorium of the State Office Building. Those interested in attending this hearing shall notify in writing: Jack Damron and 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: 305 employees of the Kentucky State Penitentiary, 802 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF CORRECTIONS
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

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

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised November 15 [~~October 11~~], 1993, are incorporated by reference and shall be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

NTC 01-05-01 Extraordinary Occurrence Reports
NTC 01-10-01 Legal Assistance for Staff
NTC 01-11-01 Political Activities of Merit Employees
NTC 01-15-01 Establishment of the Warden as Chief Executive Officer
NTC 01-17-01 Relationships with Public, Media and Other Agencies
NTC 02-02-02 Warden's Participation in the Agency Budgeting Process
NTC 02-03-01 Fiscal Management: Audits
NTC 02-04-01 Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Accounts
NTC 04-01-01 Training and Staff Development (Amended 11/15/93)
NTC 04-04-01 Firearms and Chemical Agents Training (Amended 11/15/93)
NTC 06-01-01 Offender Records [~~(Amended 10/11/93)~~]
NTC 06-01-02 Records - Release of Information
NTC 06-01-03 Taking Offender Record Folders onto the Yard
NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01 Safety Standards
NTC 10-01-01 Special Management Unit [~~(Amended 10/11/93)~~]
NTC 10-02-01 Protective Custody Unit
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards and Regulations for Food Service Employees
NTC 11-06-01 Inspection and Sanitation
NTC 11-07-01 Purchasing and Storage of Food Products
NTC 12-01-01 Institutional Inspection
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens [~~(Amended 10/11/93)~~]
NTC 12-02-02 Issuance of Personal Hygiene Products
NTC 13-01-01 Emergency Medical Care Plan
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products
NTC 13-05-01 Dental Services
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care and Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving, Viewing, Handling and Storage of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for General Population Dormitories [~~(Amended 10/11/93)~~]
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations [~~(Amended 10/11/93)~~]
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property
NTC 17-01-03 Unauthorized Inmate Property
NTC 17-01-04 Disposition of Unauthorized Property
NTC 17-01-05 State Issue and Required Inmate Clothing [~~(Amended 10/11/93)~~]
NTC 17-03-01 Assessment/Orientation [~~(Amended 10/11/93)~~]
NTC 18-01-01 Preparole Progress Report
NTC 18-02-01 Classification
NTC 18-02-02 Classification - 48 Hour Notification
NTC 18-03-01 Special Notice Form
NTC 18-05-01 Transfers of Inmates
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01 Inmate Work Program (Amended 11/15/93)
NTC 19-01-03 Temporary Leave from Job Assignment
NTC 19-02-01 Correctional Industries
NTC 19-02-02 Guidelines for Correctional Industries
NTC 20-01-01 Educational Programs
NTC 20-02-02 Live Work Projects in Vocational School Classes
NTC 21-01-01 Library Services
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01 Religious Services

NTC 23-03-01 Marriage of Inmates
NTC 24-04-01 Honor Status
NTC 24-05-01 Unit Management
NTC 25-01-01 Release Preparation Program
NTC 25-01-02 Temporary Release/Community Center Release
NTC 25-01-03 Graduated Release
NTC 25-02-01 Funeral Trips and Bedside Visits
NTC 25-03-01 Inmate Release Procedure
NTC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: November 15, 1993
FILED WITH LRC: November 15, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 22, 1993, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and William Seabold, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 284 employees of the Northpoint Training Center, 937 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 Carriers
Division of Motor Vehicle Enforcement
(Proposed Amendment)

601 KAR 1:025. Transporting hazardous materials; permit by air or highway.

RELATES TO: KRS 174.400 through 174.435, 49 CFR 107, 130, 171-180
STATUTORY AUTHORITY: KRS 174.410(2), 174.430(1), 49 CFR Parts 130, 171-180
NECESSITY AND FUNCTION: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources, shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.435 relating to the transportation of hazardous materials by air or highway. KRS 174.430(1) provides that the Secretary of the Transportation Cabinet is authorized to fix a reasonable fee, by administrative regulation, to be paid by applicants for a general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of such permit. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:
(1) Title 49, Code of Federal Regulations, Part 130 effective June 16, 1993. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;
(2) Title 49, Code of Federal Regulations, Part 171 effective October 1, 1993 [~~1992~~]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;
(3) [~~(2)~~] Title 49, Code of Federal Regulations, Part 172 effective October 1, 1993 [~~1992~~]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:
(a) Shipping papers;
(b) Package marking; and
(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;
(4) [~~(3)~~] Title 49, Code of Federal Regulations, Part 173 effective October 1, 1993 [~~1992~~]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;
(5) [~~(4)~~] Title 49, Code of Federal Regulations, Part 175 effective October 1, 1993 [~~July 1, 1992~~]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;
(6) [~~(5)~~] Title 49, Code of Federal Regulations, Part 177, effective October 1, 1993 [~~1992~~]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;
(7) [~~(6)~~] Title 49, Code of Federal Regulations, Part 178 effective October 1, 1993 [~~1992~~]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(8) [(7)] Title 49, Code of Federal Regulations, Part 180, effective October 1, 1993 [1992]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

Section 2. (1) Applicants for an annual general permit to transport radioactive materials through or within the Commonwealth or to transport other hazardous materials within the Commonwealth, and for the renewal of this permit, shall pay to the Transportation Cabinet a fee of twenty-five (25) dollars.

(2) The applicant for a general permit shall submit his application to the Department of Vehicle Regulation in the form prescribed in subsection (3) of this section by the department. The department shall make the forms available to any applicant.

(3) The front page of the form shall read as follows:

TC 95-1
Kentucky Transportation Cabinet
Department of Vehicle Regulation
Division of Motor Carriers
P. O. Box 2007
Frankfort, Kentucky 40602

Application For Permit For The Transportation of Hazardous Materials And/Or Radioactive Materials (This application shall be accompanied by a $25 filing fee)

CARRIER NAME:
STREET:
CITY:STATE:ZIP:

1. Type of Carrier:Private:For-Hire:

2. Classification of Hazardous or Radioactive Materials Transported:

INTERSTATE	INTRASTATE
Radioactive Material	Hazardous Material
Radioactive Waste	Hazardous Waste
	Radioactive Material
	Radioactive Waste

3. Individual associated with carrier who is designated to be contacted in event of emergency:

NAME: PHONE NUMBERS:
During Business Hours ( )
After Business Hours ( )

TITLE:
ADDRESS (if different from above):

4. Description of emergency procedures which the carriers shall follow in the event of an emergency:

I, the undersigned official of the above company, state that the above information is true and correct.

NAME_____ OFFICIAL TITLE_____

(4) The back page of the form shall inform the applicant of the basic requirements for application for a permit and shall contain the following:

TC 95-1

GENERAL INFORMATION REGARDING KENTUCKY'S HAZARDOUS/RADIOACTIVE MATERIAL Transportation Permit

The following information generally outlines the regulations of the Division of Motor Carrier's hazardous radioactive materials transportation requirements. If you have specific questions, contact the Division of Motor Carriers at the address or the telephone number below.

A general permit may be issued to any carrier who transports radioactive materials, either interstate or intrastate, and any carrier who transports hazardous materials intrastate in Kentucky. Needed definition follow:

"CARRIER" means a person engaged in the commercial transportation of passenger or property by land as a common, contract or private carrier or civil aircraft: except for those transporting passengers or property by pipelines, railways, or waterways.

"HAZARDOUS MATERIAL" means a substance designed as hazardous by the *Federal Hazardous Materials Transportation Act (49 U.S.C. 1801, et seq.) or the federal regulations adopted pursuant thereto.

Exception: Hazardous material shall not include agricultural wastes, coal mining wastes, utility waste (fly ash, bottom ash, scrubber sludge) sludge from water treatment and sewage treatment facilities, cement kiln dust, gas and oil drilling muds, oil production brines or waste oil.

"RADIOACTIVE MATERIAL" means any material or combination of materials which spontaneously emit ionizing radiation.

The provisions of this permit do not apply to hazardous materials shipped by or for the U.S. government for military or national security purposes.

Vehicles used in the transportation of fuels to end users are also exempt from these requirements.

TO OBTAIN THIS PERMIT, THE FOLLOWING PROCEDURE SHALL BE FOLLOWED:

(1) Complete and return the application (TC 95-1) to the Kentucky Transportation Cabinet, Division of Motor Carriers, with the required $25 yearly fee. A COPY OF THIS APPLICATION IS ON THE REVERSE SIDE.
(2) Applicant shall have on file with the Division an approved certificate of public liability and property damage insurance in the minimum amounts set forth in KRS 281.655.
These minimum limits are:
(a) Petroleum or Petroleum Products Less than 10,000 lbs. - $100,000/300,000/50,000
(b) All other hazardous/radioactive material as defined in KRS 174.405 - $100,000 SINGLE LIMIT COVERAGE

*The cabinet has adopted, by reference, the federal hazardous materials transportation regulations, 49 CFR (1978), as amended, in their entirety. Those parts pertaining to railways, pipeline and waterways are specifically excluded.

The cabinet may issue a permit based upon the information contained in the application. A COPY OF THIS PERMIT SHALL BE CARRIED IN THE TRANSPORTING VEHICLE WHILE IN THE COMMONWEALTH OF KENTUCKY. Each carrier shall be assigned only one permit, and you are given permission to photostat a copy for each vehicle operating under your authority and your permit. The general permit shall be renewed annually.

This permit does not preclude or encompass any other document required by Kentucky law. A carrier shall comply with all other applicable requirements for the transportation of hazardous materials within the Commonwealth.

PLEASE ADDRESS ALL MAIL TO:
KENTUCKY DEPARTMENT OF VEHICLE REGULATION
DIVISION OF MOTOR CARRIERS
QUALIFICATIONS/PERMITS BRANCH
POST OFFICE BOX 2007
FRANKFORT, KENTUCKY 40602
Phone: (502) 564-4540

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary
STEPHEN REEDER, Deputy Secretary
APPROVED BY AGENCY: October 26, 1993
FILED WITH LRC: November 2, 1993 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 21, 1993 at 10 a.m. local prevailing time in the Transportation Cabinet, Room 1003, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 16, 1993, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by December 16, 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 December 21, 1993. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT PERSON: Sandra G. Pullen

(1) Type and number of entities affected: All transporters of hazardous materials by highway or air in Kentucky.

(a) Direct and indirect costs or savings to those affected: This proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last nine months. The changes of significance are as follows:

- A new Part of 49 CFR has been created to deal with oils under the Federal Water Pollution Control Act as amended by the Oil Pollution Act. Any oil which meets the existing definitions of a hazardous material (e.g., flammable or combustible) will continue to be regulated as a hazardous material under 49 CFR Parts 171-180. Any oil subject to the Federal Water Pollution Control Act (which includes animal and vegetable oils) will be regulated as an oil under Part 130. The new Part 130 contains comprehensive response plan requirements for shipments of bulk packagings containing oil in quantities greater than 42,000 gallons (1000 barrels) or petroleum oil in excess of 3500 gallons.

- The listing and regulating of those materials identified as marine pollutants by the International Maritime Organization to address the risks posed by environmentally hazardous materials when transported in commerce.

- An October 1, 1993 date is established for the mandatory compliance with all the new federal regulations for classification of hazardous materials, including designation of packing group. Communication requirements for transporters of hazardous materials, including marking, labeling, and shipping paper descriptions. New regulations about placarding are not mandatory until October 1, 1994.

- An October 1, 1993 date is established for the initial hazardous materials training by hazardous material employers for all employees employed on or before July 2, 1993. New employees must be trained within 90 days. The training requirements are not limited to those employees who actually transport the hazardous materials, but also the employees who have any dealings with the hazardous materials.

The remainder of the changes are technical or clarifying in nature. All hazardous material transporters fall under the purview of the federal regulations. Therefore, the adoption of the changes to the federal regulations by the Kentucky Transportation Cabinet just allows enforcement of those federal regulations by the Motor Vehicle Enforcement Officers. However, the governing federal regulations are outdated. The overall impact on the transporters of hazardous materials should be positive since the US Department of Transportation intended these changes to provide for a safer industry.

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: Transporters of oil must prepare an oil spill prevention and response plan.

(2) Effects on the promulgating administrative body: Minimal. The Motor Vehicle Enforcement officers will have to be trained in the new requirements so that they can uniformly and safely enforce them.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by US DOT. A motor carrier should not be cited for complying with the new federal requirements.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering: Was tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

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 107, 130, 171 - 173, 177 and 178.

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 130, 171 - 173, 177, 178, and 180. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 107 relating to the Federal Highway Administration program procedures.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

a. The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;

b. Establishes the emergency response information requirements for each transporter of a hazardous material;

c. Defines the general requirements for shipping and packaging of each type of hazardous material;

d. Defines the unacceptable hazardous material shipments on a highway;

e. Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;

f. Establishes shipping container specifications for the transportation of hazardous materials; and

g. Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials.

h. Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations. Therefore 49 CFR Part 175 relating to the carriage of hazardous materials by aircraft has also been adopted even though the federal incentive program does not include this part.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer
(Proposed Amendment)

701 KAR 5:050. Summary hearing procedures.

RELATES TO: KRS 156.132, 156.210
STATUTORY AUTHORITY: KRS 156.070, 156.132
NECESSITY AND FUNCTION: KRS 156.132 requires that the State Board for Elementary and Secondary Education, after a summary hearing as provided for by administrative regulations, suspend any district board of education member, public school officer, or superintendent who is believed to be guilty of immorality, misconduct in office, incompetence, nonfeasance, or willful neglect of duty; authorizes the state board to issue subpoenas and administer oaths in removal proceedings; and KRS 156.210 authorizes the chief state school officer to administer oaths and examine witnesses, issue subpoenas, and to have access to public school records. This administrative regulation implements KRS 156.132 by establishing summary hearing procedures for suspension prior to full-blown removal hearing procedures being instituted.

Section 1. When pursuant to KRS 156.132 the Commissioner of Education or the State Board for Elementary and Secondary Education determines it is appropriate to schedule a summary hearing before the state board regarding whether a district board of education member, public school officer, or superintendent should be suspended, the following shall be done:

(1) Arrange scheduling of a summary hearing; and

(2) At least ten (10) working days prior to the scheduled hearing, furnish the district board member, public school officer, or superintendent with written notice of the specific charges against him and with written notice of the scheduled hearing. Service of written notice shall be by personal delivery by a person over eighteen (18) years of age or by certified mail return receipt requested with instructions to the delivering postal employee to deliver to the addressee only and show the address where delivered and the date of delivery.

Section 2. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this administrative regulation may grant hearing continuances through the chairman of the state board or the hearing panel or through the hearing examiner for just cause shown by verified statement of the accused or by signed statement of his attorney, although when a panel of the state board or a hearing examiner conducts the hearing, a report in the form hereinafter required shall, whenever practicable, be made to the state board for its next regular meeting following referral of the matter to the [~~such a~~] panel or hearing examiner.

Section 3. The full board, or a panel thereof, or any hearing examiner designated to conduct a hearing under this administrative regulation shall:

(1) Administer oaths, examine witnesses under oath, issue requested subpoenas to compel attendance of witnesses or production of physical evidence;

(2) Tape record all testimony taken; and

(3) Issue, whenever a hearing panel or hearing examiner is utilized, a written report to the state board containing a synopsis of the testimony taken, any exhibits filed, and a recommendation.

Section 4. Any hearing held under this administrative regulation shall be for the purpose of allowing the accused district board member, public school officer, or superintendent to appear, with or without counsel, and to reply to the charges, although witnesses testifying in support of the charges may, at the option of the state board, also be heard. Formal rules of evidence and confrontation and cross-examination of witnesses shall not be applicable unless specifically ordered by the state board.

Section 5. Any hearing regarding a public school officer or superintendent and held under this administrative regulation shall be closed to the public, unless otherwise requested by the accused public school officer [~~district board member~~] or superintendent, and the [~~any~~] hearing panel's or hearing examiner's report shall be held confidential. A hearing regarding a district board member held under this administrative regulation shall be open to the public, and the hearing panel's or hearing examiner's report shall be a public record.

Section 6. Any failure of a district board member, public school officer, or superintendent to avail himself of the summary hearing procedures set forth herein shall not be deemed a waiver of his right to contest actual removal from office under KRS 156.132, and the procedures set forth herein shall not be deemed, purely by force of this administrative regulation, to apply to any hearing which shall be held for actual removal.

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

required by KRS 156.070(4).

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: November 15, 1993
FILED WITH LRC: November 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993, at 10 a.m. in the State Board Room, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Kentucky Department of Education, Office of Legal Services, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin Noland
(1) Type and number of entities affected: Any local school officials against whom charges are issued.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effect upon competition:
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(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: These requirements can only be established by SBESE by regulation.
(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied: No. Applies equally to all charged local school officials.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services
(Proposed Amendment)

702 KAR 3:130. Internal accounting.

RELATES TO: KRS [~~156.031,~~] 156.070, 156.200
STATUTORY AUTHORITY: KRS 156.070, 156.160[~~, 156.200~~]

NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990;~~] KRS 156.070 gives the State Board for Elementary and Secondary Education the management and control of the common schools; and KRS 156.200 gives the state board authority over accounting procedures and reports of local school districts. This administrative regulation is necessary to establish uniform procedures for the accounting of school activity funds.

Section 1. "Internal accounts" shall be defined as all funds derived from fund raising activities sponsored under the auspices of the school except that funds raised or received by organizations which do not come under the direct supervision of school authorities shall not be considered internal accounts.

Section 2. The district board of education shall have the responsibility for administration and control of all internal accounts.

Section 3. The district board of education shall develop accounting procedures consistent with those set out in the Department of Education's "A Uniform Program of Accounting for School Activity Funds in Kentucky Schools," rev. September 1993 [~~July, 1990~~], a copy of which is incorporated by reference and which may be inspected, copied, and obtained from the Office of District Support Services [~~School Administration and Finance~~], 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.

Section 4. Internal accounts shall be audited annually as follows:
(1) High school activity fund accounts shall be audited by a certified public accountant.
(2) The high school activity fund account for the purpose of making the audit shall be defined as follows:
(a) Schools with grade ranges of 10 through 12;
(b) Schools with grade ranges of 9 through 12;
(c) Schools with grade ranges of 7 through 12; and
(d) Schools with grade ranges of primary [~~1~~] through 12.
(3) Activity fund accounts other than high school accounts shall be audited either by a certified public accountant or a select committee approved by the Board of Education. The committee shall be composed of central office staff, principals, teachers or citizens who are not employees of the board.
(4) If an audit committee is selected by the Board of Education, the names and titles of the committee members shall be submitted to the chief state school officer for approval prior to the date of the audit.
(5) The audit report shall be reviewed and accepted by the local board. All recommendations and exceptions listed in the audit shall be reviewed by the Department of Education's accounts examiner and a report made to the district Board of Education and the chief state school officer. A copy of the audit report shall be on file in both the office of the principal and the office of the superintendent of the local school district where it [~~they~~] shall be open for public inspection.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: November 15, 1993
FILED WITH LRC: November 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993, at 10 a.m. in the

State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 16, 1993, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, General Counsel, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kyna Koch

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effect upon competition): None

(b) Reporting and paperwork requirements: No additional.

(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: No additional.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or 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 or arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Learning Support Services
(Proposed Amendment)

704 KAR 3:285. Programs for the gifted and talented.

RELATES TO: KRS 157.200, 157.224, 157.230

STATUTORY AUTHORITY: KRS 156.070, 157.220, 157.224

NECESSITY AND FUNCTION: KRS 157.200 includes within the definition of "exceptional children" a category of "exceptional students" who are identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychological or leadership skills, or in the visual or performing arts [~~exceptionally high achieving, gifted and talented students~~]; KRS 157.224 commits the state to a comprehensive educational program for its exceptional school aged children, [~~as indicated by biennial budget appropriations;~~] and KRS 157.230 requires all school districts to operate programs for resident exceptional children, primary - grade twelve (12). This administrative regulation relates to funding, the provision of appropriate services for identified gifted students, and the operation of gifted education programs. [~~This regulation relates to the funding and operation of programs for gifted and talented pupils and directs the Department of Education to administer said programs.~~]

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) "Acceleration options" means various forms of advancing through material or grade levels prior to the prescribed time based on early mastery, such as pretesting in content and being excused to go onto higher level activities, curriculum compacting or linear acceleration, simultaneous or dual enrollment in courses at different grade levels including postsecondary, early exit from school, and grade-skipping.

(2) "Advanced placement and honors courses" means courses emphasizing college-level content based on college board curricula and tests (advanced placement), or the provision of more challenging material through higher levels of content, process and product (honors courses).

(3) "Cluster group" means a grouping of approximately four (4) to six (6) identified students placed in a heterogeneous classroom with a teacher trained in the appropriate instruction of special needs students, specifically gifted and talented, for the purpose of receiving a differentiated educational experience matched to the student's needs, interests, and ability.

(4) "Collaborative teaching" means a gifted education teacher comes into a regular classroom and provides direct instruction to a group of identified gifted students in conjunction with the regular classroom teacher.

(5) "Consultation services" means the provision of instructional information and materials by the gifted teacher to the regular classroom teacher so that he may provide appropriate and adequate services to the gifted student while in the regular classroom setting.

(6) "Consortium" means a collaboration of schools or districts that pool resources to provide appropriate services for gifted and talented students.

(7) "Counseling services" means affectively-based counseling assistance provided by a counselor familiar with the characteristics and socioemotional needs of gifted and talented students.

(8) "Creative or divergent thinking ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in creative thinking and divergent approaches to conventional tasks as evidenced by innovative or creative reasoning, advanced insight and imagination, and solving problems in unique ways.

(9) "Diagnosis" means the evaluation and determination of which service option(s) would be the most appropriate intervention given an individual child's interests, needs, and abilities.

(10) "Differentiation" means a method through which educators may establish a specific, well-thought-out match between learner characteristics in terms of abilities, interests, and needs, and curriculum opportunities in terms of enrichment and acceleration options which maximize learning experiences.

(11) "Differentiated service experience(s)" means educational experience(s) which extend, replace, or supplement learning beyond the standard curriculum.

(12) "Disadvantaged" means operating under conditions detrimental to normal cognitive or affective growth due to socioeconomic limitations, cultural factors, geographic isolation, or various combinations of these factors to a degree that requires special consideration(s).

(13) "Distance learning" means learning opportunities offered through the use of computer technology and satellite transmission or optical fiber transmission.

(14) "Extracurricular enrichment opportunities" means differentiated, academically-based activities that supplement classroom instruction and are often after school and competitive in nature, such as academic teams.

(15) "Formal identification" means a process by which a student is identified and diagnosed as having gifted characteristics and behaviors using a balanced combination of informal measures and formal standardized or normed instruments, and by which a student may be determined eligible for various levels of services.

(16) "General intellectual ability" means possessing either the potential or demonstrated ability to perform at an exceptionally high level in general intellectual ability and possessing a consistently outstanding mental capacity as compared to children of one's age, experience, or environment. General intellectual ability is usually reflected in extraordinary performance in a variety of cognitive areas, such as abstract reasoning, logical reasoning, social awareness, memory, spatial relations, and the analysis, synthesis, and evaluation of information.

(17) "High potential learner(s)" means those students who typically represent the top one-third (1/3) of the entire student population in terms of achievement and frequently require special enrichment opportunities to remain educationally challenged. In terms of aptitude, students identified as gifted and talented are found in the top five (5) percent of this group.

(18) "Independent study" means self-directed study of a selected topic under the supervision of a teacher or the auspices of a university.

(19) "Instructional grouping" means the temporary grouping of students for the purposes of specific skill development, socioemotional needs, and interests.

(20) "Magnet school" means a school which is organized around an area of interest(s), draws students from an entire community, and has no specific entrance standard(s) except interest in the focus of the school (e.g., a magnet school for the arts or a magnet school for science and mathematics).

(21) "Mentorship" means specialized studies, such as internships, with an adult mentor in the community and under the direction of an educator knowledgeable in gifted education.

(22) "Primary review committee" means primary teachers, counselors, administrators, gifted education personnel, and any other appropriate personnel familiar with the child's potential or demonstrated abilities.

(23) "Psychosocial or leadership ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in social skills and interpersonal qualities such as poise, effective oral and written expression, managerial ability, and the ability, or vision, to set goals and organize others to successfully reach those goals.

(24) "Resource services" means part-time grouped classes gifted students based on the interests, needs and abilities of the students. This type of service delivery option is designed for accelerated content, special interest groups, process skills development or various combinations of all.

(25) "Seminars" means discussion-based sessions on specific topics focusing on advanced content and higher level process skills.

(26) "Special schools" means specialized schools designed to serve gifted students in grades four (4) through twelve (12) in specific academic areas (such as magnet schools in science and mathematics) or to develop specific areas of giftedness such as visual and performing arts.

(27) "Specific academic aptitude" means possessing either potential or demonstrated ability to perform at an exceptionally high level in specific academic areas significantly beyond the age, experience or environment of one's chronological peers. While students with specific academic aptitude are typically of at least above average intellectual ability, they are often extremely capable of high performance in one (1), or a very few related, academic area(s).

(28) "Talent pool" means a group of promising primary students diagnosed as having gifted characteristics and behaviors using a series of informal measures and who are eligible for differentiated service delivery options during their stay in the primary program.

(29) "Travel study options" means academically-based United States and overseas travel which may result in high school or university course credit.

(30) "Underachieving" means the development of a significant gap between a student's potential ability and demonstrated achievement to such a degree that there is an overall diminished ability to achieve at the expected level of ability.

(31) "Visual or performing arts ability" means possessing either potential or demonstrated ability to perform at an exceptionally high level in the visual or performing arts and demonstrating the potential for outstanding aesthetic production, accomplishment, or creativity in areas such as art, dance, music, drama, speech, and in activities requiring exceptional gross or fine motor skills. [~~Pursuant to the authority vested in the Kentucky State Board for Elementary and Secondary Education by KRS 156.070 and 156.220, the "Kentucky Guidelines for Gifted Education" March, 1988, are presented herewith for filing with the Legislative Research Commission, and incorporated by reference. Such document may be inspected and copied at the Office of Instruction, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

Section 2. Policies and Procedures. (1) Each local school district shall have in operation and available for public inspection local board approved policies and procedures which address each requirement in this administrative regulation and are consistent with KRS 157.200, 157.224, 157.230 and 703 KAR 4:040. [~~The "Kentucky Guidelines for Gifted Education" shall be followed by local school districts in developing programs to apply for state funds to operate such programs.~~]

Section 3. Identification and Diagnosis of Gifted Characteristics, Behaviors, and Talent and Determination of Eligibility for Services. (1) Each district shall adopt policies and procedures which shall provide for identification and diagnosis of strengths, gifted behaviors and talents through:

(a) Informal identification and diagnosis in the primary program;

(b) Formal identification and diagnosis of students on a three (3) year cycle in grades four (4) through twelve (12); and

(c) Provision of multiple service delivery options in primary through grade twelve (12).

(2) Each local school district shall establish a procedure that identifies students displaying gifted and talented behaviors and characteristics as defined in KRS 157.200 and Section 1 of this administrative regulation and allows for determination of eligibility for services based on the student's individual needs, interests and abilities. This procedure shall include a combination of informal measures, formal measures and objective-based eligibility criteria and shall be performed on a three (3) year basis.

(3) Each local school district shall provide a system for diagnostic screening and identification of strengths, gifted behaviors and talents which gives special consideration to racial and ethnic minority children, disadvantaged children, and children with disabilities.

(4) District identification and diagnosis procedures for appropriate services shall be based upon a balanced multiple criteria approach, continuous and multiple long-term assessment, and early identification and diagnosis of strengths, gifted behaviors and talents.

(5) Each local school district shall implement a procedure to obtain parental or guardian permission prior to formal identification and diagnosis of strengths, gifted behaviors and talents, and to notify

parents of eligible students of provision of appropriate services.

(6) Informal assessment options may be used for placement in the district's talent pool. Formal measure(s), consistent with this administrative regulation, shall be used for formal identification and diagnosis.

(7) In the primary unit, formal, normed measures may be used for diagnosing the level of service needed by a student and for evaluation of student progress, however, data from formal, normed measures shall not be used for the purpose of determining eligibility for services as to a child in the primary unit.

(8) No single assessment instrument or measure shall be the basis for formally identifying or denying services once a child has been informally identified and placed in the talent pool.

(9) For children in the primary program, the procedure for identifying and diagnosing a child's strengths, gifted behaviors, and talent shall include a minimum of three (3) of the following recognized or acceptable assessment options to screen and refer students for services through a talent pool:

(a) A collection of evidence (e.g., primary portfolios) demonstrating student performance;

(b) Behavior checklists;

(c) Diagnostic data;

(d) Continuous progress data;

(e) Anecdotal records;

(f) Peer nominations;

(g) Available formal test data;

(h) Parent interview or questionnaire;

(i) Self-nomination or petition system; and

(j) Other valid and reliable documentation.

(10) Exit from the primary program shall be based on criteria established by 703 KAR 4:040.

(11) For students in grades four (4) through twelve (12), a local school district's procedure for identifying and diagnosing gifted and talented behaviors, and the level of services needed, shall include:

(a) A valid and reliable combination of formal and informal measures to identify strengths, gifted behaviors and talents which indicate a need and eligibility for service options;

(b) At least three (3) of the following recognized or acceptable assessment options for identification and diagnosis:

1. A collection of evidence from portfolios demonstrating student performance;

2. Teacher behavior checklist;

3. Continuous progress data;

4. Anecdotal records;

5. Peer nominations;

6. Formal testing data;

7. Parent interview;

8. Primary review committee recommendation for those entering the fourth grade;

9. Self-nomination or petition system;

10. Other valid and reliable documentation; and

(c) At least one (1) source of data shall be derived from an appropriate formal, normed individual or group measure such as intelligence tests, achievement tests, and aptitude tests.

(12) To qualify as gifted and talented students in grades four (4) through twelve (12) the following criteria shall be met in at least one (1) of the following gifted and talented categories:

(a) General intellectual ability shall be determined by a student score within the ninth stanine on a full scale comprehensive test of intellectual ability, or a composite score in the ninth stanine on a standardized or normed achievement test. When a student scores low on a formal group measure of academic strength, yet other factors show potential, the district shall administer an individual mental ability test. Evidence of general intellectual ability also may include:

1. High performance on an individual or group intellectual assessment;

2. Observation of applied ability; and

3. Perseverance to complete task(s).

(b) Specific academic aptitude shall be determined by composite scores in the ninth stanine on one (1) or more subject test score(s) of an achievement test. When a student scores low on a formal group measure of academic strength, yet other factors show potential, the district shall administer an individual mental ability test. Evidence of specific academic aptitude also may include:

1. High performance on an individual or group test of academic aptitude;

2. Student awards or critiques of performance(s);

3. Off-level testing;

4. Portfolio of high academic performances; and

5. Student progress data.

(c) Creativity shall be determined through the use of informal or formal assessment measures which focus on determining a child's capacity for originality of thought, fluency, elaboration, and flexibility of thought. Evidence of creative thinking ability also may include:

1. Creative writing samples;

2. High scores on tests of creative ability (Williams, Torrance, etc.);

3. Behavioral checklists or observations targeting creative behavior; and

4. Observation of original ideas or products, problem-solving.

(d) Leadership or psychosocial abilities shall be determined by a variety of informal measures administered by a teacher knowledgeable in the nature and needs of the gifted such as behavioral checklists, and the documentation of the willingness of a student to assume leadership roles in class, in student organizations, and in community activities. Evidence of psychosocial or leadership ability also may include:

1. Sociograms (i.e., questionnaires designed to assess leadership characteristics);

2. Peer recommendations;

3. Behavioral checklists or observations targeting leadership behavior;

4. Portfolio entries which display leadership qualities; and

5. Offices held by student in extracurricular activities and class government, etc.

(e) Visual and performing arts talent shall be determined through evidence of performance which may include: audition(s), letters of recommendations, and product or portfolio assessment by specialists or professional artists. Evidence of visual or performing arts also may include:

1. Awards or critiques of performance; and

2. Portfolio of visual or performing arts ability. [~~Each local school district receiving state funds for the operation of a gifted and talented program shall be monitored by the State Department of Education, Office of Instruction, to determine the effectiveness of the program.~~]

Section 4. Procedure for Determining Eligibility for Services. (1) The procedure for identifying gifted characteristics, behaviors and talent shall be based on the following process:

(a) Data gathering. Districts shall develop a system for initially searching the target population for likely candidates for services using both informal and available formal, normed, standardized measures, including measures of spatial ability for disadvantaged children and youth;

(b) Data analysis. Districts shall develop a system for analyzing student data for the purposes of a comparison of the students in the talent pool to local or national norms, a comparison of the data among the students within the pool, and developing an index of a student's scores relative to others in the pool;

(c) Selection committee for eligibility determination. The school district shall assembly a selection committee which shall have four (4) purposes:

1. To provide feedback on the adequacy of the district's identification and diagnostic procedure;

2. To ensure that a variety of views are heard during the selection process;

3. To determine which students should receive services, and at what level; and

4. To help provide communication and support in the community.

(d) Provision of services. Districts shall implement an articulated primary through grade twelve (12) services which provide multiple delivery options matched to diagnosed behaviors, strengths and characteristics of individual students; and

(e) Petition and appeal for services. Districts shall provide a petition system as a safeguard for otherwise eligible students to apply for services who may have been missed in the identification and diagnosis procedure.

(2) Exceptions and special considerations for eligibility. School personnel shall take into consideration conditions such as environmental, cultural, and disabilities which may mask a child's true abilities that leads to exclusion of otherwise eligible students, such as:

(a) Any student who qualifies as an exceptional child as defined in KRS 157.200;

(b) Any student who qualifies as disadvantaged; and

(c) Any student who qualifies as underachieving.

Section 5. Program Evaluation. (1) District policies and procedures shall ensure that program evaluation processes shall be conducted on an annual basis and shall address:

(a) Overall student progress;

(b) Student, parent, and faculty attitudes toward the program;

(c) Community involvement;

(d) Cost effectiveness;

(e) The incorporation of gifted education into the regular school program;

(f) Overall quality of instruction and program personnel credentials; and

(g) Future program directions and modifications.

(2) Continued funding of the local district's gifted education annual plan for services shall be contingent upon the results of the preceding year's evaluation of the overall program.

Section 6. Service Delivery Options. (1) Students diagnosed as possessing gifted characteristics, behaviors and talent shall be provided articulated, primary through grade twelve (12) services which are qualitatively differentiated to meet their individual needs, result in educational experiences commensurate with identified population's interests, needs and abilities, and facilitate the high level attainment of the goals established in KRS 158.6451.

(2) For students in primary programs, services shall be provided within the framework of primary program requirements and shall allow for continuous progress through a differentiated curriculum and flexible grouping and regrouping based on the individual needs, interests, and abilities of the student. Consistent with 704 KAR 3:440(2), with the two (2) exceptions of the special school and the self-contained classroom, all service delivery options shall be available in the primary program.

(3) Emphasis on educating gifted students in the general primary classroom, shall not preclude the continued, appropriate use of resource services, acceleration options, or any of the specialized service options contained in subsection (4)(b) of this section. Recommendations for services shall be made on an individual basis.

(4) Grouping for instructional purposes and multiple services delivery options shall be utilized in local district gifted education plans. Student grouping formats shall include grouping for instructional purposes based on student interests, abilities, and needs, including social and emotional. Example of alternative grouping arrangements are listed in subsection (5) of this section.

(5) Local school districts shall implement multiple service delivery options with no single service option existing alone, districtwide, at any grade level. These service delivery options shall be differentiated to such a degree as to be consistent with the language and intent of KRS 157.200(1). Both grouping for instructional purposes, and multiple service delivery options, may include such alternatives as:

(a) Various acceleration options;

(b) Advanced placement and honors courses;

(c) Collaborative teaching and consultation services;

(d) Special counseling services;

(e) Differentiated study experiences in the regular classroom;

(f) Distance learning;

(g) Enrichment services during the school day (not extracurricular);

(h) Independent study;

(i) Mentorships;

(j) Resource services;

(k) Seminars;

(l) Cluster grouping;

(m) Travel study options;

(n) Special schools, grades four (4) through twelve (12) only;

(o) Itinerant services; and

(p) Special summer sessions.

(6) With the exception of academic competitions and optional extracurricular offerings, services shall be provided during the regular school hours.

Section 7. Curriculum. (1) A comprehensive framework or course of study for children and youth who are diagnosed as possessing gifted characteristics, behaviors and talent shall be based on each district or school's curricula required to meet the goals established in KRS 158.6451.

(2) Each school shall differentiate, replace, supplement, or modify curricula to facilitate high level attainment of the learning goals established in KRS 158.6451 and to assist students identified and diagnosed as gifted and talented to develop their individual interest, needs and abilities.

Section 8. Personnel. Each local school district shall ensure that personnel providing services to gifted and talented students are prepared through appropriate credentials or professional development to address the individual needs, interests and abilities of the students.

Section 9. Budget; Funding. (1) State funds for gifted education shall be used specifically for direct services to students who are gifted and talented. Direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel. Seventy-five (75) percent of a district's state gifted education allocation shall be used to employ properly certified personnel to provide direct instructional services.

(2) Any budget decisions made after the annual submission of the local district gifted education plan application shall be coordinated through the district gifted education coordinator.

(3) Districts receiving state gifted education funding shall designate a gifted education coordinator to:

(a) Oversee the district gifted education operation;

(b) Serve as liaison between the district and the state;

(c) Ensure internal compliance with state statutes and administrative regulations; and

(d) Administer and revise the gifted education program budget.

(4) State funding to districts shall be contingent upon:

(a) Employing properly certified personnel to administer and teach in the program;

(b) The annual submission of a local district gifted education plan application;

(c) A summative evaluation of the program and student progress; and

(d) Complying with all mandated elements within this administrative regulation.

Section 10. Procedural Safeguards. A school district shall establish a grievance procedure through which parents and students may resolve concerns regarding the appropriate and adequate provision of services. This districtwide grievance procedure shall address:

(1) How, and by whom, the grievance procedure is initiated;

(2) Determining the need to evaluate or reevaluate the child for appropriate services;

(3) Determining if placement of the child needs revision;

(4) Ensuring appropriate services are provided to all identified students consistent with KRS 157.200 and 157.230; and

(5) The participation of parents, a regular education teacher of the student, a gifted education teacher or coordinator, administrator, and counselor.

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

Thomas C.Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: November 15, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 e 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, Kentucky Department of Education, Office of Legal Services, 500 Mero Street, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Charles Whaley

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: None expected.

1. First year: None expected.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effect upon competition: None

(b) Reporting and paperwork requirements: No additional.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: State board can impose these standards only by administrative regulation.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied: No. Applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of Special Instructional Services
(Proposed Amendment)

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 in writing the steps for making needed changes in the regular education environment to implement the IEP. These changes may include:

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) 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, to the maximum extent appropriate to the needs of that child or youth.

(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: November 15, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 e 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, Kentucky Department of Education, Office of Legal Services, 500 Mero Street, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Ken Warlick

(1) Type and number of entities affected: 176 local school districts, two state schools (Kentucky School for the Blind and Kentucky School for the Deaf) and approximately 85,000 children and youth with disabilities and their parents.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effect upon competition: None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: State level monitoring of placement in the least restrictive environment is mandated by federal regulations under IDEA. Therefore, least restrictive environment requirements must be contained in the KARs. No other alternative was available.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: No

TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all entities regulated by it. Disparate treatment of agencies or individuals under this administrative regulation could be questioned as arbitrary action by the state. The equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 300.553

2. State compliance standards. 707 KAR 1:220

3. Minimum or uniform standards contained in the federal mandate. The federal statutes require that in providing or arranging for the provision of nonacademic and extracurricular services and activities, each public agency ensure that each child with a disability participates with nondisabled children in those activities to the maximum extent appropriate to the needs of that child.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This language is being proposed at the direction of the Federal Office of Special Education Programs in order to allow for conditional approval of the state's application for funding (approximately $44 million) under the Individuals with Disabilities Education Act.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Proposed Amendment)

780 KAR 2:020. Occupational appeals officer.

RELATES TO: KRS 151B.025, 151B.030, 151B.110

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: The State Board for Adult and Technical Education finds it necessary to promulgate regulations providing for appeal from the suspension of expulsion order.

Section 1. There is hereby established within the Department of Adult and Technical Education the occupational appeals officer. The appeals officer shall be the Ombudsman for the Office of Kentucky Tech.

Section 2. An applicant or a student of vocational education services who is dissatisfied with the decision of a vocational regional hearing process may appeal to the occupational appeals officer concerning decisions of enrollment, suspension, or expulsion of vocational students who are attending any program subject to the control of the State Board for Adult and Technical Education.

Section 3. The student or applicant shall have twenty (20) school days from the date of the regional hearing in which to file a notice of appeal with the Secretary of the State Board for Adult and Technical Education. The notice of appeal shall designate the administrative action or order from which the appeal is taken.

Section 4. The administrative agency from which the appeal has been taken shall file the complete record of all action including any official transcript with the Secretary of the State Board for Adult and Technical Education.

Section 5. The hearing officer shall notify the parties within ten (10) school days after the filing of the appeal of the date, time and place of the hearing. The hearing shall be set within twenty (20) school days after the date of the notice, unless the parties mutually agree to another time.

Section 6. The hearing shall be conducted by the ombudsman or his[~~/her~~] designee and he[~~/she~~] shall not be bound by formal rules of evidence.

Section 7. The appellant shall have the burden of proof at the hearing and shall introduce proof in support of the appeal as the first order of proof. The appellee shall then submit its proof. The appellant may then submit rebuttal proof. All witnesses shall be subject to cross-examination.

Section 8. The appeals officer shall then hear oral arguments or may request written briefs allowing a reasonable time for the submission thereof.

Section 9. The hearing shall be transcribed by an official court reporter.

Section 10. The hearing officer shall make findings of fact, conclusions of law and recommendations to the State Board for Adult and Technical Education at its next regular or special meeting. The Board shall within thirty (30) school days of receipt thereof make a final determination of the case.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: October 14, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, December 28, 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 December 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 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, (502) 564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All students who appeal a decision of a vocational regional hearing process. (Less than 1 per year.)

(a) Direct and indirect costs or savings to those affected: No cost or savings to the student who appeals.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: (Note any effects upon competition.)

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: This administrative regulation allows the State Board to review suspension, expulsion decisions appealed by students.

(a) Direct and indirect costs or savings: Cost of court reporter services.

1. First year: Unknown

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Number of appeals filed. (Only two in three years.)

(b) Reporting and paperwork requirements: Minimal record of due process proceedings.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Students need a process to appeal adverse decisions. This alternative has worked very well for both the board and the students.

(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: NA

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: NA

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. The administrative regulation must apply equally to all students.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Proposed Amendment)

780 KAR 2:060. Suspension and expulsion of students.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education all necessary power and authority in administering the state's vocational education program, and KRS 158.150 sets forth the grounds and procedures for suspension and expulsion from the state's common schools. This regulation establishes the procedure for the suspension and expulsion, for disciplinary reasons, of students from state vocational-technical schools and area vocational education centers and largely adopts the grounds and procedures for such set forth in KRS 158.150.

Section 1. Teachers and administrators employed by a state vocational-technical school or an area vocational education center shall be responsible for the supervision and discipline of students during the time they are in attendance at a state-operated vocational facility.

Section 2. All students shall comply with policies of the state-operated vocational school in which they are enrolled. Willful disobedience or defiance of the authority of the teachers or administrators; assault or battery or abuse of other students or school personnel; the threat of force or violence; the use or possession of illicit drugs or alcohol; stealing, destroying, or defacing school or personal property; possessing or using dangerous weapons or instruments; excessive unexcused absenteeism; or other incorrigible bad conduct on school property or at school-sponsored activities constitutes cause for disciplinary suspension or expulsion from a state-operated vocational school.

Section 3. Secondary school students who are subject to disciplinary action shall be referred by the principal of a state vocational-technical school or the coordinator of an area vocational education center to the principal of the parent school in which the student is enrolled. However, the vocational school principal or his[/~~her~~] designee shall have the authority to immediately suspend for a maximum of three (3) days, without action by the parent school, secondary students to protect persons or property, or to avoid disruption of the ongoing academic programs when situations warrant. The vocational principal shall submit in writing to the principal of the parent high school the reason(s) for disciplinary action and recommend any further action. The principal of the parent high school shall respond to the vocational principal as to the action to be taken. The vocational principal or coordinator will accept the decision of the local school authority and act accordingly.

Section 4. Any secondary student who is suspended or expelled from a participating local high school shall be considered suspended or expelled from the state vocational-technical school or area vocational education center in which the student is enrolled.

Section 5. The principal of a state-operated vocational facility shall be authorized to suspend postsecondary or adult students for cause as set forth in Section 2 of this regulation. No student shall be suspended for more than ten (10) consecutive school days for any one (1) instance of misconduct. No student shall be suspended without first being given oral or written notice of the charge or charges against him; an explanation of the evidence of the charge(s) if the student denies such; and an opportunity to present his own version of the facts related to the charge or charges. Such due process procedures shall precede any suspension unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, such procedures shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

Section 6. (1) The regional director of vocational education shall be authorized to convene a hearing for expulsion of a postsecondary or adult student for cause as set forth in Section 2 of this regulation.

(2) No student shall be expelled from a state-operated vocational school without a hearing, pursuant to written, specific notice of the charges, before a committee composed of the regional director, a regional program coordinator, and three (3) vocational instructors. The regional director shall submit in writing to the Director of Kentucky Tech within three (3) school days a copy of the hearing committee's findings, conclusions, and action taken on the expulsion of a student. A copy of such report shall be provided the student involved. The decision to expel a student may be appealed to the State Board for Adult and Technical Education.

Section 7. Readmittance to the school shall be on the basis of waiting list priorities at the time of expulsion or on the basis of at least a ninety (90) day expulsion (excluding the month of July), whichever is longer. The regional hearing committee may, however, set appropriate, shorter expulsion terms whenever extenuating circumstances and the facts of individual cases so warrant.

C. RICHARD WARNER, Chairman

APPROVED BY AGENCY: October 14, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, December 28, 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 December 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 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, (502) 564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock

(1) Type and number of entities affected: Schools operated by the Kentucky Tech System under the management and control of the

State Board for Adult and Technical Education; 23 postsecondary schools and 54 secondary area centers.

(a) Direct and indirect costs or savings to those affected: No cost factors are affected by this 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 change. Technical, not substantive revision.

(2) Effects on the promulgating administrative body: No change. Technical, not substantive revision.

(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 change.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives would not provide the requisite consistency for secondary students and postsecondary students.

(5) Identify any statute, rule, or regulation or governmental policy which may be in conflict, overlapping, or duplication: The policy reflected in this regulation overlaps KRS 158.150 to provide consistency in student disciplinary actions for secondary students.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: No

TIERING: Was tiering applied: No. All students must be treated equally with regard to disciplinary policies.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education
(Proposed Amendment)

780 KAR 2:090. Postsecondary vocational technical school admission priorities.

RELATES TO: KRS 151B.025, 151B.110

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY AND FUNCTION: KRS 151B.110 gives the State Board for Adult and Technical Education authority to carry out the purposes of the state's vocational education program, and further gives it all necessary power and authority to administer vocational education in the state-operated vocational schools. This regulation establishes admission priorities for adults for state-operated vocational schools.

Section 1. State-operated vocational schools in the Kentucky Tech System shall maintain the following adult student applicant lists:

(1) Prospect list by date of inquiry;

(2) Preadmission program list of applicants not meeting program admission requirements who are enrolled in the school in a remediation program designed to assist in meeting program entry requirements;

(3) Preregistration waiting list of program-ready applicants who have completed all program entry requirements; and

(4) List of applicants who have not requested program admission but request admission to continuing education classes. Continuing education enrollees in classes which are part of preparation programs shall [~~must~~] meet program entry requirements prior to acceptance in a diploma program.

Section 2. The preregistration waiting list shall show the date applicants completed requirements and became program-ready. Applicants enrolled in a remediation program are placed on the preregistration list only after meeting entrance test scores. The preregistration list shall be updated in December and June of each year. Any applicant on the list over six (6) months shall [~~must~~] notify the school of a desire to remain on the list or the name will be deleted. Applicants shall [~~must~~] respond within seven (7) calendar days after official notification by letter of admission into the program.

Section 3. Class size projects funded under contract or agreement with another public or with a private agency shall give priority admission to clients sponsored by the funding agency. If not prohibited by the contract or agreement, slots not used may be filled from the general preregistration list.

Section 4. Individual slots in regular programs which are purchased by other public or by private agencies shall be reserved for clients sponsored or referred by that agency. Slots shall be identified and purchased by specific programs.

Section 5. Students shall be admitted from the general preregistration list in the following order of priority:

(1) Students in good standing who, because of illness or other hardship, previously had to withdraw but want to reenter the program;

(2) Secondary vocational students who, upon graduation from high school, wish to continue training at the long-term adult level and who file an application prior to graduation. (Students in social services' programs operated under the direction of the Office of Kentucky Tech shall be qualified under this category);

(3) Continuing education students who have successfully completed the core classes for a specific occupational program as defined in the curriculum and wish to become full-time students or individuals who have successfully worked in a related occupation for one (1) or more years. Such students shall meet all other entrance requirements.

(4) Students enrolled in other Kentucky vocational schools, including the Carl D. Perkins Rehabilitation Center and correctional institutions, who request a transfer to complete their present training; and

(5) Veterans who, within one (1) year of honorable separation from military service, make their first and initial application for enrollment, with names being placed on the lists according to the date of entry into military service, or dependents of a deceased veteran who are otherwise eligible.

Section 6. For vacancies in full-time programs, applicants requesting full-time attendance shall receive priority over those requesting part-time attendance.

Section 7. An applicant's name shall be removed from the preregistration list when the applicant:

(1) Fails to respond upon notification that an opening is available;

(2) Requests that his[~~/her~~] name be removed;

(3) Enrolls in a program; or

(4) Fails to notify the school that he[~~/she~~] wishes to remain on the list.

Section 8. Students entering high technology Category I programs in industrial education or health programs may be required to spend a day in an occupational setting related to the career objective unless they have had previous work experience in the field. The school may provide alternate scheduling of this occupational shadowing to occur in the school setting. As part of the process for orienting prospective students about programs, schools are encouraged to use personnel employed in the field. A group orientation [~~and/~~]or an individual preadmission counseling interview shall be required before any individual is admitted as a student into a high technology program.

C. RICHARD WARNER, Chairman
APPROVED BY AGENCY: October 14, 1993
FILED WITH LRC: November 15, 1993 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, December 28, 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 December 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 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, (502) 564-4286.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Beverly Haverstock
(1) Type and number of entities affected: State-operated postsecondary vocational-technical schools. There are 23 schools.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings connected with admissions priorities governed by this administrative 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: None
(a) Direct and indirect costs or savings: None. This regulation sets priorities for admissions in vocational-technical schools.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Minimal in connection with keeping waiting lists when needed.
(3) Assessment of anticipated effect on state and local revenues: No effect. This administrative regulation does not involve revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternate methods which accomplish the setting of admission priorities.
(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: N/A
(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied: No. This regulation applies equally to all areas, schools, and persons admitted to the postsecondary state schools.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 2:090. Fee for collecting city, county, or urban county government insurance tax.

RELATES TO: KRS 91A.080
STATUTORY AUTHORITY: KRS Chapter 13A, 91A.080, 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for and as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 91A.080 requires the Commissioner of Insurance to adopt administrative regulations providing for a reasonable collection fee to compensate insurers and insurance agents for collecting local government ~~[Kentucky municipal]~~ premium taxes. This administrative regulation provides for a reasonable collection fee to be charged by an insurance company or its agent for collecting or remitting to a city, county, or urban county government such taxes or fees required by its ordinances for the privilege of engaging in the business of insurance within that city, county, or urban county government.

Section 1. A reasonable collection fee shall be an amount equal to fifteen (15) percent of the license fee or tax collected and remitted to the city, county, or urban county government or two (2) percent of the premium subject to the license fee or tax, whichever is less. The license fees or taxes to be collected and remitted may be rounded off to the nearest whole dollar.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 22, 1993
FILED WITH LRC: November 12, 1993 at 10 a.m.
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed administrative regulation may comment at a public hearing scheduled for December 21, 1993, at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 10 a.m. (ET), on December 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery
Need for the Proposed Amendment: The current administrative regulation addresses these premium taxes as municipal premium taxes. However, KRS 91A.080 states that cities, counties, or urban-county governments can assess these license fees or taxes upon insurance companies for doing business within the confines of their governments. Therefore, a more appropriate name for these taxes is local government premium tax to encompass the entire statute.
(1) Type and number of entities affected: All insurance companies which are currently licensed to do business in Kentucky are affected by this administrative regulation, unless these companies have been specifically exempt by the Kentucky Insurance Code.
(a) Direct and indirect costs or savings to those affected:
1. First year: All insurance companies required to collect premium taxes for local governments should make changes in forms and paperwork to properly reflect the appropriate title for this tax as "local government premium tax" instead of "municipal premium tax".

2. Continuing costs or savings: There should be no additional cost once the initial changes in forms and paperwork have been made.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The paperwork should reflect the proper description of the tax as "local government premium tax" instead of "municipal premium tax".

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional cost or savings to the promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department is already properly addressing the tax as the "local government premium tax" in all of its reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The current administrative regulations address this tax as a municipal premium tax. However, these taxes are assessed by cities, counties, and urban-county governments. Therefore, the tax is more properly called the local government premium tax. If the administrative regulations address the tax as local government premium tax, then the administrative regulations are all inclusive and cannot be read to excuse an insurance company from collecting taxes due to any forms of government who may assess this tax.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not used since the proposed administrative regulation should apply to all insurance companies who are required to collect this premium tax equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 2:095. Accounting and reporting requirements for collecting local government premium [~~insurance~~] tax.

RELATES TO: KRS 91A.080, 304.4-010

STATUTORY AUTHORITY: KRS Chapter 13A, 91A.080, 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for and as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 91A.080 authorizes the Commissioner of Insurance to adopt administrative regulations for the collection and reporting of local government [~~municipal~~] premium taxes. This administrative regulation provides for the accounting and reporting procedures to be used by every insurance company or its agent, to which this administrative regulation applies, for the collection and reporting of the fees or taxes and the collection fee herein provided by ordinance of a city, county, or urban county government for engaging in the business of insurance therein.

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

(2) "Local government [~~Municipal~~] premium taxes" means taxes levied pursuant to KRS 91A.080.

(3) "Premiums actually collected within a calendar quarter" means premiums which have been received at an insurer's home, administrative, or regional offices within a calendar quarter. Agency contracts which allow agents a period of time in which to forward premium payments to insurers shall not allow an unreasonably long period of time. An agency contract which allows an agent more than ninety (90) days to forward premium payments to an insurer is presumed to allow an unreasonably long period of time. This presumption may be rebutted by appropriate evidence.

Section 2. Quarterly Payment and Reporting of Local Government [~~Municipal~~] Premium Taxes. Each insurer with local government [~~municipal~~] premium tax liability shall make payment of its tax liability based on premiums actually collected within a calendar quarter. Payment shall be made within thirty (30) days of the end of each calendar quarter. Insurers shall make their returns on forms prescribed by the commissioner (or forms substantially similar to those prescribed by the commissioner) or on forms prescribed by cities, counties, or urban-county governments. Copies of these forms shall not be filed with the commissioner unless the commissioner directs that returns be filed with the commissioner.

Section 3. Annual Reports. (1) Insurers shall furnish each city, county, and urban-county government to which local government [~~municipal~~] premium taxes have been paid during the preceding calendar year a report on the local government [~~municipal~~] premium taxes paid during the preceding calendar year. A copy of this report shall be filed with the commissioner accompanied by a fee of five (5) dollars per insurer.

(2) The reports required by this section shall be filed with cities, counties, and urban-county governments and with the commissioner by March 31st of each year following the calendar year to which the reports apply.

(3) The reports required by this section shall be on a form prescribed by the commissioner (or on a form substantially similar to that prescribed by the commissioner).

(4) The form prescribed by the commissioner shall contain the following information:

(a) An itemization of all premiums collected for which a local government [~~municipal~~] premium tax is payable together with the amount of such tax collected and paid to each city, county, or urban-county government for the following kinds of insurance:

1. Casualty;
2. Fire and allied perils;
3. Health;
4. Inland marine;
5. Life;
6. Motor vehicle; and
7. Such other kinds of insurance as the commissioner may designate.

(b) Such other information as the commissioner may designate.

Section 4. Each insurer shall maintain records adequate to support the reports required by this administrative regulation. This section applies to insurance agents and surplus lines brokers to the extent they are responsible for collecting and paying local government [~~municipal~~] premium taxes imposed pursuant to KRS 91A.080.

Section 5. Each insurer must file the reports required by this administrative regulation. Data filed on a group basis is unacceptable.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 22, 1993
FILED WITH LRC: November 12, 1993 at 10 a.m.
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed administrative regulation may comment at a public

hearing scheduled for December 21, 1993, at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 10 a.m. (ET), on December 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery

Need for the Proposed Amendment: The current administrative regulation addresses these premium taxes as municipal premium taxes. However, KRS 91A.080 states that cities, counties, or urban-county governments can assess these license fees or taxes upon insurance companies for doing business within the confines of their governments. Therefore, a more appropriate name for these taxes is local government premium tax to encompass the entire statute.

(1) Type and number of entities affected: All insurance companies which are currently licensed to do business in Kentucky are affected by this administrative regulation, unless these companies have been specifically exempt by the Kentucky Insurance Code.

(a) Direct and indirect costs or savings to those affected:

1. First year: All insurance companies required to collect premium taxes for local governments should make changes in forms and paperwork to properly reflect the appropriate title for this tax as "local government premium tax" instead of "municipal premium tax".

2. Continuing costs or savings: There should be no additional cost once the initial changes in forms and paperwork have been made.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The paperwork should reflect the proper description of the tax as "local government premium tax" instead of "municipal premium tax".

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional cost or savings to the promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department is already properly addressing the tax as the "local government premium tax" in all of its reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The current administrative regulations address this tax as a municipal premium tax. However, these taxes are assessed by cities, counties, and urban-county governments. Therefore, the tax is more properly called the local government premium tax. If the administrative regulations address the tax as local government premium tax, then the administrative regulations are all inclusive and cannot be read to excuse an insurance company from collecting taxes due to any forms of government who may assess this tax.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not used since the proposed administrative regulation should apply to all insurance companies who are required to collect this premium tax equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 2:096. Disclosure of local government [~~municipal~~] premium taxes; unfair discrimination.

RELATES TO: KRS 91A.080, 304.12-080, 304.12-090

STATUTORY AUTHORITY: KRS Chapter 13A, 91A.080, 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 91A.080 authorizes the Commissioner of Insurance to adopt administrative regulations for the collection and reporting of local government [~~municipal~~] premium taxes. This administrative regulation requires that policies issued for the first time contain a notice that the premium charged includes a local government [~~municipal~~] premium tax.

Section 1. Definitions. [~~As used in this regulation:~~]

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(2) "Local government [~~Municipal~~] premium taxes" means taxes levied pursuant to KRS 91A.080.

Section 2. (1) As to property, casualty, surety, marine, title, and mortgage guaranty insurance, whenever a local government [~~municipal~~] premium tax is imposed upon insurers for the privilege of engaging in business in a city, county, or urban-county government, the premium charge shall make provision for local government [~~municipal~~] premium taxes.

(2) As to life and health insurance, whenever a local government [~~municipal~~] premium tax is imposed upon insurers for the privilege in engaging in business in a city, county, or urban-county government, the premium charge may make provision for local government [~~municipal~~] premium taxes.

(3) The amount of local government [~~municipal~~] premium taxes may, at the option of the insurer, be shown on the policy.

Section 3. Each policy issued to an insured for the first time shall include a notice that the premium includes a charge for local government [~~municipal~~] premium taxes if local government [~~municipal~~] premium taxes are included in the premium charge. Such notice shall be placed upon the title sheet of the policy by use of a typewriter, stamp, sticker, or any reasonable means approved by the commissioner. Such notice may, at the option of the insurer, be placed on renewal certificates and billings issued subsequent to the original policy.

Section 4. This administrative regulation shall become effective January 1, 1985.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: October 22, 1993

FILED WITH LRC: November 12, 1993 at 10 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed administrative regulation may comment at a public hearing scheduled for December 21, 1993, at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 10 a.m. (ET), on December 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of

Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery

Need for the Proposed Amendment: The current administrative regulation addresses these premium taxes as municipal premium taxes. However, KRS 91A.080 states that cities, counties, or urban-county governments can assess these license fees or taxes upon insurance companies for doing business within the confines of their governments. Therefore, a more appropriate name for these taxes is local government premium tax to encompass the entire statute.

(1) Type and number of entities affected: All insurance companies which are currently licensed to do business in Kentucky are affected by this administrative regulation, unless these companies have been specifically exempt by the Kentucky Insurance Code.

(a) Direct and indirect costs or savings to those affected:

1. First year: All insurance companies required to collect premium taxes for local governments should make changes in forms and paperwork to properly reflect the appropriate title for this tax as "local government premium tax" instead of "municipal premium tax".

2. Continuing costs or savings: There should be no additional cost once the initial changes in forms and paperwork have been made.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The paperwork should reflect the proper description of the tax as "local government premium tax" instead of "municipal premium tax".

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional cost or savings to the promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department is already properly addressing the tax as the "local government premium tax" in all of its reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The current administrative regulations address this tax as a municipal premium tax. However, these taxes are assessed by cities, counties, and urban-county governments. Therefore, the tax is more properly called the local government premium tax. If the administrative regulations address the tax as local government premium tax, then the administrative regulations are all inclusive and cannot be read to excuse an insurance company from collecting taxes due to any forms of government who may assess this tax.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not used since the proposed administrative regulation should apply to all insurance companies who are required to collect this premium tax equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 2:097. Filing of local government [~~municipal~~] premium tax ordinances; notification to insurers.

RELATES TO: KRS 91A.080, 304.4-010

STATUTORY AUTHORITY: KRS Chapter 13A, 91A.080, 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 91A.080 authorizes the Commissioner of Insurance to adopt administrative regulations for the collection and reporting of local government [~~municipal~~] premium taxes. This administrative regulation establishes procedures for cities, county, and urban-county governments to file their local government [~~municipal~~] premium tax ordinances with the Commissioner of Insurance and provides procedures for notification to insurers of the contents of these local government [~~municipal~~] premium tax ordinances.

Section 1. Definitions. [~~As used in this regulation:~~]

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(2) "Local government [~~Municipal~~] premium taxes" means taxes levied pursuant to KRS 91A.080.

Section 2. Filing of Local Government [~~Municipal~~] Premium Tax Ordinances. In accordance with KRS 91A.080, any city, county, or urban-county government which has imposed a local government [~~municipal~~] premium tax shall file a copy of its ordinance with the commissioner. Ordinances may adopt or amend a local government [~~municipal~~] premium tax on a prospective basis only. Any adopted or amended ordinance must be filed with the commissioner more than 100 [~~sixty (60)~~] days prior to [~~January 1st or~~] July 1st of each year. If an adopted or amended ordinance is received less than 100 [~~sixty (60)~~] days prior to [~~January 1st or~~] July 1st, the commissioner shall not notify insurers of the adopted or amended ordinance until the next notice of local government [~~municipal~~] premium taxes is published [~~and insurers shall be responsible for paying taxes on the basis of the adopted or amended ordinances only on premiums received after the publication date of the next notice of municipal premium taxes. For example, if a city or urban county government files its adopted or amended ordinance on December 1st, insurers will not be notified of the adopted or amended ordinance until approximately thirty (30) days prior to July 1st of the next year. Insurers shall be responsible for paying taxes on the basis of the adopted or amended ordinances only on premiums received after the publication of the next notice of municipal taxes, in this example, July 1st of the next year~~].

Section 3. Notification to Insurers of Local Government [~~Municipal~~] Premium Taxes. (1) Approximately eighty-five (85) [~~thirty (30)~~] days prior to [~~January 1st and~~] July 1st of each year, the commissioner shall mail to insurers notice of those cities, counties, or urban-county governments which impose a local government [~~municipal~~] premium tax.

(2) The notice shall be mailed to the current address of the administrative offices of an insurer as on file with the commissioner.

(3) One (1) copy of the notice of local government [~~municipal~~] premium taxes shall be provided to insurers free of charge. Additional copies of the notice of local government [~~municipal~~] premium taxes or copies of the notice of local government [~~municipal~~] premium taxes requested by others shall be available only on written request and payment of five (5) dollars fee for filing the request.

Section 4. Effective Date. This administrative regulation shall become effective January 1, 1985.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: October 22, 1993
FILED WITH LRC: November 12, 1993 at 10 a.m.
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed administrative regulation may comment at a public hearing scheduled for December 21, 1993, at 10 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Don W. Stephens, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 10 a.m. (ET), on December 21, 1993, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery
Need for the Proposed Amendment: The current administrative regulation addresses these premium taxes as municipal premium taxes. However, KRS 91A.080 states that cities, counties, or urban-county governments can assess these license fees or taxes upon insurance companies for doing business within the confines of their governments. Therefore, a more appropriate name for these taxes is local government premium tax to encompass the entire statute.
(1) Type and number of entities affected: All insurance companies which are currently licensed to do business in Kentucky are affected by this administrative regulation, unless these companies have been specifically exempt by the Kentucky Insurance Code.
(a) Direct and indirect costs or savings to those affected:
1. First year: All insurance companies required to collect premium taxes for local governments should make changes in forms and paperwork to properly reflect the appropriate title for this tax as "local government premium tax" instead of "municipal premium tax".
2. Continuing costs or savings: There should be no additional cost once the initial changes in forms and paperwork have been made.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The paperwork should reflect the proper description of the tax as "local government premium tax" instead of "municipal premium tax".
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No additional cost or savings to the promulgating administrative body.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The department is already properly addressing the tax as the "local government premium tax" in all of its reporting and paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The current administrative regulations address this tax as a municipal premium tax. However, these taxes are assessed by cities, counties, and urban-county governments. Therefore, the tax is more properly called the local government premium tax. If the administrative regulations address the tax as local government premium tax, then the administrative regulations are all inclusive and cannot be read to excuse an insurance company from collecting taxes due to any forms of government who may assess this tax.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? Tiering is not used since the proposed administrative regulation should apply to all insurance companies who are required to collect this premium tax equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 30:010. LP Gas license; financial responsibility required.

RELATES TO: KRS 234.120
STATUTORY AUTHORITY: KRS 234.120(4)
NECESSITY AND FUNCTION: KRS 234.120 requires the Commissioner to promulgate reasonable regulations requiring proof of financial responsibility. This administrative regulation is made to assure persons injured by LP Gas dealers have some assets against which to recoup some of their loss. This amendment is necessary to clarify the nature of the insurance required for obtaining an LP gas dealer's license and to specify the information required. [~~This amendment is necessary to specify the type of financial responsibility proof required for licensure.~~]

Section 1. Proof of Financial Responsibility, Amount. (1) Prior to the issuance or renewal of a license to engage in the LP gas business as required by KRS 234.120, the applicant shall submit a certificate of insurance [~~from an insurance company authorized to do business in Kentucky~~] certifying that the applicant has a valid commercial general liability insurance policy which includes coverage for completed operations and for [~~the payment of~~] damages because of injuries to persons, damage to their property and any other damage or loss resulting from or arising out of the LP gas dealer's business, trade, products, services, premises or operations [~~in personal injury and property damage~~] in the minimum amount of $100,000, per person and $500,000 per occurrence or [~~incident~~] for licenses set forth in KRS 234.120(1)(a) through (d) and for business license set forth in KRS 234.120(1)(e) through (k) in the minimum amount of $1,000,000.
(2) The insurer shall be an authorized insurer or an eligible surplus lines insurer as defined by the Kentucky Department of Insurance.
(3) The certificate of insurance shall be executed by the licensed agent or broker or by the insurer as follows:
(a) Form LPG-1, Certificate information.

LPG-1 CERTIFICATE OF INSURANCE
LP GAS DEALERS

Policy Period:
Name of insured:
Address:
Name of Insurer:
Address:
Name of Agent/Broker:
Address:
Policy Coverage: Commercial General Liability, including products and completed operations for LP Gas Dealer Business, in the following amounts: (Check one)
Aggregate minimum limits per incident or occurrence:
☐ $1,000,000 ☐ $500,000; $100,000 per person

Type of Company: (Check one)
Authorized/Admitted Carrier ☐
Eligible Surplus Lines Carrier ☐
The undersigned hereby certifies that the above mentioned insurance protection has been issued in the amounts indicated.
Signature: (KY Licensed Agent or Broker)
or
Signature: (Insurer)
Title:

(b) Alternate certificate. In lieu of Form LPG-1, a standard company certificate of insurance or policy declaration form may be used; but, only if all the information listed on the State Fire Marshal's Form LPG-1 is included.

(4) [~~(2)~~] Failure to maintain the required insurance shall void the license.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: November 11, 1993
FILED WITH LRC: November 12, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Indirect cost only as cost of doing business necessitates insurance for public protection.

(a) Direct and indirect costs or savings to those affected:

1. First year: Current cost of general liability coverage; average cost varies depending on company providing coverage.

2. Continuing costs or savings: Most insurance policies are provided on an annual basis so continuing cost would be a constant.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Insurance cost are relative and should not cause any ill effects on competition with companies licensed or permitted through the Kentucky Department of Insurance.

(b) Reporting and paperwork requirements: No additional paperwork required.

(2) Effects on the promulgating administrative body: The amendments herein provided result in indirect savings only to occasional problem of how to show financial responsibility if no insurance.

(a) Direct and indirect costs or savings:

1. First year: No direct cost or indirect cost to administrative body.

2. Continuing costs or savings: No continuing cost to administrative body.

3. Additional factors increasing or decreasing costs: No additional factors either increasing or decreasing cost.

(b) Reporting and paperwork requirements: No additional paperwork - certificate provided by license.

(3) Assessment of anticipated effect on state and local revenues: State or local government will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Providing proof of financial responsibility is an uncertain method when financial statements are provided by licensee. The regulation provides for no third party or independent response to the department. There is no real method to determine authenticity of financial statements provided to this office.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict exists if the regulation is amended.

(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: Due to the liability associated with the use of this product (LP gas) and its application to many facilities, including places of assembly, including but not limited to schools and churches, in the event of an accident caused by some failure of mechanism or failure due to workmanship, the liability cost could be catastrophic.

TIERING: Was tiering applied? Yes. Some requirements are different depending on the nature of the business - either $500,000 or $1,000,000 in insurance; other requirements are the same.

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 of the designation, rescheduling or deletion [~~thereof~~] is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Human Resources, after considering the [~~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 the [~~such~~] isomers, if [~~whenever~~] the existence of the [~~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 if [~~whenever~~] the existence of the [~~such~~] salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Alprazolam;
(2) Bromazepam;
(3) Camazepam;
(4) Carisoprodol;
(5) Chlordiazepoxide;
(6) [~~(5)~~] Clobazam;
(7) [~~(6)~~] Clonazepam;
(8) [~~(7)~~] Clorazepate;
(9) [~~(8)~~] Clotiazepam;
(10) [~~(9)~~] Cloxazolam;
(11) [~~(10)~~] Delorazepam;
(12) [~~(11)~~] Diazepam;
(13) [~~(12)~~] Estazolam;
(14) [~~(13)~~] Ethyl loflazepate;
(15) [~~(14)~~] Fludiazepam;
(16) [~~(15)~~] Flunitrazepam;
(17) [~~(16)~~] Flurazepam;
(18) [~~(17)~~] Halazepam;
(19) [~~(18)~~] Haloxazolam;
(20) [~~(19)~~] Ketazolam;
(21) [~~(20)~~] Loprazolam;
(22) [~~(21)~~] Lorazepam;
(23) [~~(22)~~] Lormetazepam;
(24) [~~(23)~~] Mebutamate;
(25) [~~(24)~~] Medazepam;
(26) [~~(25)~~] Methohexital;
(27) [~~(26)~~] Midazolam;
(28) [~~(27)~~] Nimetazepam;
(29) [~~(28)~~] Nitrazepam;
(30) [~~(29)~~] Nordiazepam;
(31) [~~(30)~~] Oxazepam;
(32) [~~(31)~~] Oxazolam;
(33) [~~(32)~~] Pinazepam;
(34) [~~(33)~~] Prazepam;
(35) [~~(34)~~] Quazepam;
(36) [~~(35)~~] Temazepam;
(37) [~~(36)~~] Tetrazepam; [~~and~~]
(38) [~~(37)~~] Triazolam; and
(39) Zolpidem.

Section 3. Narcotics [~~Analgesics, Nonnarcotics~~]. 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: October 26, 1993
FILED WITH LRC: November 11, 1993 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for December 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 persons notify the following office in writing by December 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: Approximately 3,000 health care professionals including pharmacists, physicians, dentists, veterinarians and nurses 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 because the amendments add two drugs to the list of substan-ces in Schedule IV and alter wording to comply with the 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 that is not already required for other substances in Schedule IV.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There are no anticipated costs or savings to the agency because the only substantive change is to add two drugs to the list of substances in Schedule IV.
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 these amendments.
(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: 1) nonconformity with KRS Chapter 13A would result; 2) nonconformity with 21 CFR 1308.14 would result; and 3) abuse of carisoprodol would continue to escalate.
(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 provisions of KRS Chapter 218A apply to all health care professionals 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 substances in Schedule IV are set forth in KRS 218A.100.
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 applies

requirements identical to those in the federal regulations, with the exception of the drug carisoprodol.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Abuse of carisoprodol has reached a crisis in Kentucky. It is associated with the abuse of other controlled substances and frequently is sought by persons known to abuse drugs. In addition, patterns of use, prescription forgeries and scientific knowledge indicate abuse, misuse and addiction. The stricter standard will not impose any hardship or difficulty for legitimate use by physicians and patients but will allow tracking of abuse and misuse.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:004. Resource and income standard of medically needy.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, b, c, d, p, r-5

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program [~~of Medical Assistance~~]. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Spouse" means a person legally married to another under state law.

(2) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in a home and community based services (HCBS) waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program if [~~so long as~~] the individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.

(3) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in an HCBS waiver program.

(4) "Medical institution or nursing facility" means a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(5) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of home and community based waiver services (or a combination of both). A continuous period of institutionalization terminates when an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.

(6) "Likely to remain" in an institution means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.

(7) "Countable resources" are resources not subject to exclusion in the Medicaid Program.

(8) "State spousal resource standard" means the amount of couples' combined countable resources determined necessary by the cabinet for community spouses to maintain themselves in the community.

(9) "Spousal protected resource amounts" are resources deducted from couples' combined resources for community spouses in eligibility determinations for institutionalized spouses; amounts above spousal protected resource amounts are used to determine eligibility for institutionalized spouses.

(10) "Spousal resource allowances" means the differences in the dollar value of resources protected for community spouses and the value of the resources actually held in the name of community spouses.

(11) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse upon request by either spouse, of the joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.

(12) "Support right" means the right of institutionalized spouses to receive support from community spouses under state law.

(13) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid program.

(14) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

(15) "Other family members" means children who are either minor or dependent, dependent parents and dependent siblings of either member of a couple and who reside with the community spouse.

(16) "Minors" means the couples' minor children (under age twenty-one (21)) who live with a community spouse and are being claimed as dependents by either spouse under the Internal Revenue Service Code (IRSC).

(17) "Dependent children" means the couples' children age twenty-one (21) and above who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(18) "Dependent parents" means parents of either member of a couple who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(19) "Dependent siblings" means a brother or sister of either member of a couple (including half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and are claimed as dependents by either spouse under the IRSC.

(20) "Otherwise available income" means income to which community spouses have access and control. Available income of the community spouse includes gross income that would be used to determine eligibility under Medicaid without benefit of disregards (including federal, state and local taxes; child support payments, and other court ordered obligations, etc.). [~~If the community spouse is working, the amount of mandatory deductions such as taxes is not considered available; court ordered payments and other obligations such as child support are also deducted from otherwise available income.~~]

(21) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(22) "Community spouse maintenance standard" means the income standard to which community spouses' income is compared for purposes of determining the amount of allowances used in the posteligibility calculation.

(23) "Other family members maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of other family members and the standard maintenance amount.

(24) "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty income guidelines for a family unit of two (2) members (with revisions of the official poverty line applied for

Medicaid [~~medical assistance~~] provided during and after the second calendar quarter that begins after the date of publication of the revisions) multiplied by [~~133 percent effective July 1, 1991, and multiplied by~~] 150 percent effective July 1, 1992.

(25) "Monthly income allowances" means amounts deducted in the posteligibility calculation for maintenance needs of community spouses and other family members. The allowances shall be [~~are~~] based on the deficit remaining after spouses' and other family members' income is compared to appropriate maintenance needs standards.

(26) "Significant (or extreme) financial duress" exists when either member of a couple establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse [~~so as~~] to permit the community spouse to remain in the community.

(27) "Living with" is defined as sharing a common living arrangement or household but not including living in the same room in a long-term care facility.

(28) "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Living apart may mean living in a medical institution, special school, or in foster care and the status continues even if the individual makes visits to the home.

(29) The terms assets, income, institutionalized individual, and resources shall be defined pursuant to 42 USC 1396p(e).

(30) "Income deeming" means income which shall be considered available to a Medicaid budget unit from an individual not in the budget unit taking into consideration the allowable deductions from the excluded individual's income.

(31) "Month after the month of separation" means the first day of the month that follows the month in which an individual ceases living in the same household of the Medicaid budget unit.

Section 2. Resource Limitations and Exclusions of the Medically Needy. The following provisions shall be applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at $2,000 and $4,000 respectively, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value shall be excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration. The value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of families with children, and which shall be used in a trade or business or by the individual or member of the family group as an employee is excluded from consideration as a resource. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of $4,500 in automobiles shall be excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of the automobile shall be excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds shall be excluded from consideration. The cash surrender value of life insurance shall be considered when determining the total value of burial reserves. If [~~When~~] burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as income or a resource if [~~so long as~~] the amount is left to accumulate as a part of the burial reserve or space.

(6) Burial trusts, burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons shall be excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this administrative section, or Section 21 of this regulation, to be in excess of excluded amounts shall [~~must~~] be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group shall be [~~is~~] ineligible.

(8) The following exclusions shall be also applicable as stated:

(a) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) [~~Applicable with regard to determinations of eligibility made on or after July 1, 1991,~~] Income and resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support (PASS), Impairment Related Work Expense (IRWE) deduction, or the Blind Work Expense (BWE) deduction shall be excluded from consideration.

(c) Payments or benefits from federal statutes, other than Supplemental Security Income, benefits shall be excluded from consideration (as either a resource or income) if precluded from consideration in supplemental security income determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance shall be excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) The life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Real property shall be excluded from consideration for adult Medicaid [~~medical assistance~~] and state supplementation recipients if:

1. The property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or

2. Its sale is barred by a legal impediment; or

3. The owner's reasonable efforts to sell have been unsuccessful.

(h) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services shall not be considered as available income or as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(i) Any amount received which is a result of an underpayment (i.e., which is a retroactive payment) of benefits from Federal Old Age, Survivors, and Disability Insurance Benefits or Supplemental Security Income shall be excluded as a resource for the first six (6) months following the month in which the amount is received [~~or for the first nine (9) months following receipt if receipt is during the period of October 1, 1987 through September 30, 1989~~].

(j) Federal Republic of Germany reparation payments shall not be considered available in the eligibility and posteligibility treatment of income and resources of individuals in nursing facilities or hospitals or who are receiving home and community based services under a

waiver.

(k) Social Security cost of living adjustments on January 1 of each year shall not be considered as available income for qualified Medicare beneficiaries and specified low-income Medicare beneficiaries until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services, U.S. Government, is published.

(l) [~~Applicable with regard to determinations of eligibility made on or after July 1, 1991,~~] Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income. To the extent that the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime, the amount shall be [~~is~~] completely excluded as a resource; otherwise the resource shall be excluded as a resource for nine (9) months for pain and suffering.

(m) [~~Applicable with regard to determinations of eligibility made on or after July 1, 1991 through August 31, 1991,~~] Veterans receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars excluded as income in the Medicaid eligibility determination but the ninety (90) dollar payment shall be considered as income in the posteligibility determination process.

(n) Austrian social insurance payments based, in whole or in part, on wage credits granted under paragraphs 500-506 of the Austrian General Social Insurance Act shall be excluded from income and resource consideration.

(o) Individual retirement accounts, Keogh plans and other tax deferred assets shall be excluded as income and resources until withdrawn.

Section 3. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) shall not be allowed in determining eligibility for Medicaid [~~medical assistance~~] only.

Section 4. Income Limitations of the Medically Needy. Eligibility from the standpoint of income shall be [~~is~~] determined by comparing adjusted income as defined in Section 5 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,600	$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, $720 annually or sixty (60) dollars monthly shall be [~~is~~] added to the scale.

Section 5. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 4 of this administrative regulation, gross income shall be [~~is~~] adjusted as follows in all cases with exceptions as contained in Section 6 of this administrative regulation:

(a) In Aid to Families with Dependent Children (AFDC) related medical assistance cases, the standard work related expenses of adult members and out-of-school youth shall be deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction shall be [~~is~~] ninety (90) dollars per month. All earnings of an in-school child shall be disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) In AFDC related medical cases, dependent care as a work expense shall be allowed (but only when the dependent is included in the assistance unit) for full-time and part-time employment (as defined in 904 KAR 2:016, Standard for need and amount; AFDC). The dependent care work expense shall be deducted after all other disregards have been applied. The dependent care work expense allowed shall not exceed, per month, $200 for full-time or part-time employment per child under age two (2), and $175 for full-time employment or $150 for part-time employment per child age two (2) and above and for each incapacitated adult.

(2) The following special factors shall be applicable for pregnant women, infants and children eligible pursuant to Section 1902(1) of the Social Security Act:

(a) Pregnant women and children under age one (1) shall [~~may~~] have family income [~~up to, but~~] not [~~to~~] exceeding [~~,~~] 185 percent and children age one (1) or over but under age six (6) shall [~~may~~] have family income [~~up to, but~~] not [~~to~~] exceeding [~~,~~] 133 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services (DHHS), United States Government, and revised annually, and the updated official poverty guidelines to be used for a year shall [~~will~~] be the latest poverty guidelines available as of March 1 of the particular state fiscal year;

(b) [~~Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991,~~] Children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age shall [~~may~~] have family income [~~up to, but~~] not [~~to~~] exceeding [~~,~~] 100 percent of the official DHHS poverty income guidelines.

(c) Pregnant women, infants and children who would be eligible under provisions of 42 USC 1396a(1) of the Social Security Act except for income in excess of the allowable standard shall not become eligible by spending down to the official poverty guidelines;

(d) Available resources shall be disregarded;

(e) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(f) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The following special income and resource limits and provisions shall be applicable for determinations of eligibility of qualified Medicare beneficiaries, qualified working disabled individuals, and specified low-income Medicare beneficiaries for the special Medicare benefits described in 907 KAR 1:006[~~, effective for determinations of eligibility made on or after January 1, 1989~~].

(a) The following income limits shall apply to the appropriate category of assistance:

1. Qualified Medicare beneficiaries shall have income not exceeding 100 percent of the official poverty income guidelines.

2. Specified low-income Medicare beneficiaries shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 110 percent of the official poverty income guidelines, and effective January 1, 1995, not to exceed 120 percent of the official poverty income guidelines.

3. Qualified working disabled individuals shall have income not exceeding 200 percent of the official poverty income guidelines. [~~The following income upper limits, shown as a percentage of the official poverty income level, shall be effective on the specified dates: January 1, 1990, ninety (90) percent; and January 1, 1991, 100 percent.~~]

(b) The official poverty income guidelines shall be those promulgated by the Department of Health and Human Services, United

States Government, and revised annually, and the updated official poverty guidelines to be used for a year shall be the latest poverty guidelines available as of March 1 of the particular state fiscal year.

(c) The income disregards to be used shall [will] be those applicable in the federal Supplemental Security Income (SSI) program.

(d) Resources shall be limited to [no more than] twice the allowable amount for the federal Supplemental Security Income (SSI) program.

Section 6. Specified Individuals in Long-term Care Facilities. For aged, blind or disabled individuals in long-term care facilities not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 21 of this administrative regulation, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard or special income level, [is used as are appropriate] disregards, and exclusions from income shall be used. In determining patient liability for the cost of institutional care, gross income shall be [is] used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance shall be [, effective March 1, 1991, is] forty (40) dollars monthly plus any mandatory, nondiscretionary deductions from income in lieu of the figure shown in Section 4 of this administrative regulation. Mandatory nondiscretionary deductions include such items as minimum state and federal taxes, but shall [does] not include items such as court-ordered child support, alimony, and similar payments resulting from actions by the recipient. For individuals receiving the ninety (90) dollars reduced Veterans Administration (VA) improved pension benefits, the personal needs allowance shall be [is] ninety (90) dollars effective with the month that the VA payment is reduced. [Applicable for determinations of patient liability on or after September 1, 1991,] Amounts excluded under a plan to achieve self-support (PASS), as an income related work expense (IRWE) or blind work expense (BWE) shall be considered an increased personal needs allowance for all Medicaid recipients except those for whom a quarterly spend-down process is applicable. All income in excess of the amount protected for basic maintenance shall be [is] applied to the cost of care except as follows:

(a) Available income in excess of the basic maintenance allowance shall be [is] first conserved as needed to provide for needs of the minor children up to the appropriate family size amount from the scale as shown in Section 4 of this administrative regulation.

(b) Remaining available income shall be [is then] applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that[, effective for determinations of eligibility for periods beginning on or after December 1, 1988,] the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) If [When] an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment shall be [is] considered as available income to offset the cost of care (to the Medicaid [Medical Assistance] Program) if actually available for payment to the provider.

(5) [Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter,] Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with 42 USC 1382(e)(1)(G) shall be excluded from consideration as either income or a resource, and the [such] payments shall [may] not be used in the posteligibility process to increase the patient liability.

Section 7. Spend-down Provisions. No technically eligible individual or family shall be [is] required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 4 of this administrative regulation may qualify for Medicaid [medical assistance] in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; [effective October 1, 1988,] medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the [so long as such] medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. [Effective for determinations of eligibility for periods beginning on or after February 1, 1989,] The incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

Section 8. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard shall be [is] applied to the special need which results in the supplementary payment.

Section 9. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medicaid [Medical Assistance] Program. Examples of [such] special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

Section 10. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments[, and which are received after April 1, 1977,] shall be disregarded in determining eligibility for Medicaid [medical assistance] benefits; these [such] individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. For individuals who applied by July 1, 1988, [Beginning on November 1, 1986,] the additional amount specified in 42 USC 1383c(b) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) these [such] individuals would be eligible for federal supplemental security income benefits[; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988].

Section 11. Relative Responsibility. For purposes of the Medicaid [Medical Assistance] Program, spouses shall be [are] considered responsible for spouses and parents shall be [are] considered responsible for dependent minor children. [Effective for determinations of eligibility made on or after December 1, 1987,] Children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) shall be [are] considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if these [such] children are emancipated under state law. This responsibility, with regard to income and resources, shall be [is] determined as follows:

(1) ["Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness.

(2)] In cases of aged, blind, or disabled applicants or recipients

living with their eligible spouse, total resources and adjusted income of the couple shall be [is] considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(2) [(3)] In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 4 of this administrative regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine continuing eligibility or the spend-down amount. [Effective December 1, 1989,] If the ineligible spouse's income is less than one-half (1/2) of the MNIL for a family size of one (1), the income shall be [is] disregarded and the income of the eligible individual shall be [is] compared with the MNIL for a family size of one (1).

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(3) [(4)] In cases of aged, blind, or disabled couples, living apart for any reason, both of whom are concurrently applying for or receiving MA only, income and resources shall be [are] considered in relation to resource and income limitations for a family size of one (1) after the month of separation, or if other dependents live with either spouse, the family size including the [such] dependents in the month following the month of separation. Eligibility shall be determined on a couple basis for the month of separation.

(4) [(5)] In cases of an aged, blind, or disabled individual living apart from a spouse who is not a recipient of MA only, eligibility shall be [is] determined on a couple basis for the month of separation and as a single individual after the month of separation.

(5) [(6)] For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 11(4) and (5) of this administrative regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource shall [would] be considered a resource; except that the entire amount of a jointly held checking or savings account shall be [is] considered a resource if the resource may be accessed independently of the spouse.

(6) [(7)] Total resources and adjusted income of parent(s) and children for whom application is made shall be [is] considered in relation to limitations for family size, except that [. Excluded, however, is] the income and resources of an SSI parent and the SSI essential person spouse whose Medicaid [medical assistance] eligibility is based on inclusion in the SSI case shall be excluded. Resources and income of an SSI essential person, spouse or nonspouse, whose Medicaid [medical assistance] eligibility is not based on inclusion in the SSI case shall [must] be considered.

(7) [(8)] In cases of a blind or disabled child under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) shall be [is] related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. [The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty one (21) in September, 1980, and was MA eligible at that time.]

(8) [(9)] Income and resources of parent(s) shall [are] not be considered available to a child living apart from the parent(s), but any continuing contribution actually made shall be [is] considered as income. [Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home.] For comparison with the resource and income limitations, the child's individual resources and income shall be [are] considered in relation to family size of one (1). [Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988,] The following criteria shall [should] be used to determine whether a child who has been living with his parents and is institutionalized in a psychiatric facility (mental hospital or psychiatric residential treatment facility) shall [is to] be considered as living apart from his parents: a child shall [is to] be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so); a child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Human Resources shall [is] not [to] be considered as living with his parents.

(9) If [(10) When] a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources shall be [are] considered in the same manner as previously for up to one (1) year with[, effective with regard to determinations of eligibility made on or after March 1, 1991,] the individual allowed the basic maintenance standard as shown in Section 6(2) of this administrative regulation. If [When] a child in a family case is in the long term care facility, eligibility of the child shall be [is] determined in the same manner for up to a year but his liability for the cost of care shall be [is] determined by allowing to the child from his own income the basic maintenance standard as shown in Section 6(2) of this administrative regulation and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child shall be [is] disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members if [whenever] it becomes apparent that the separation will last for more than one (1) year.

Section 12. Treatment of Income of the Stepparent or Parent of a Minor Parent [(]referred to as a "Grandparent"[) and Effect on Eligibility of the Assistance Group Effective with Regard to Determinations of Eligibility Made On or After June 1, 1989]. An incapacitated (as determined by the department pursuant to 904 KAR 2:006) stepparent's income, or a grandparent's income, shall be [is] considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If [When] the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be [is] considered available to the spouse or the grandparent's gross income shall be [is] considered available to the minor parent in accordance with the policies set forth in this section.

(1) Disregards and [/] exclusions from income. The following disregards and [/] exclusions from income shall be applied:

(a) The first ninety (90) [seventy five (75)] dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 5(1) of this administrative regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 4 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into

consideration in the Medicaid [~~medical assistance~~] eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). If [~~When~~] a stepparent or grandparent has available income remaining after disregards and [~~/~~] exclusions are applied, the income shall [~~may~~] be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) shall be [~~is~~] determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size shall [~~would~~] include the child(ren) and parent. If there is no excess, the child(ren) shall be [~~is~~] eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(3)(a) To determine separate eligibility of the minor parent (of the grandchild) or spouse (of a stepparent) if [~~when~~] the eligibility of the grandparent or stepparent is not to be determined, consider the income of the child(ren) and his parent, and the actual amount available for deeming from the grandparent or stepparent. The budget size shall [~~would~~] include the child(ren) and parent (but not the grandparent or stepparent). If there is no excess, the minor parent or spouse (of a stepparent) shall be [~~is~~] eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(b) If [~~When~~] the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse shall not [~~cannot~~] be determined separately but shall [~~must~~] be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent or spouse and incapacitated stepparent shall be [~~is~~] determined in the usual way including the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. If [~~When~~] the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section shall [~~must~~] be considered as available income for purposes of this determination of eligibility. If there is no excess, the minor parent and grandparent or spouse and incapacitated stepparent shall be [~~are~~] eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(4) If [~~When determining~~] eligibility is being determined for [~~of~~] individuals or family groups with excess income, uncovered incurred medical expenses of the individual, family group or financially responsible relative shall [~~all members of the budget unit (and dependents of members of the budget unit whose needs are considered when determining the eligibility of that member) may~~] be used to meet the spend-down amount(s).

Section 13. Companion Cases. If [~~When~~] spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility shall [~~must~~] be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) shall [~~must~~] be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses shall be [~~are~~] combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual shall [~~are to~~] be included in the determination of eligibility of the children.

(4) A parent in a family case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs shall be [~~are~~] excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be established for the technically excluded child(ren); the income, resources and needs of the responsible relative or parent shall be [~~are~~] included in the budget in accordance with usual criteria, and income [~~/~~] resources, and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend- down case. Excess income in the spend-down case may be spent-down using uncovered incurred medical care costs of a financially responsible relative or any member of the family [~~included in the budgeting process for the spend-down case~~].

Section 14. Treatment of Lump-sum Income. [~~The following policy is effective with regard to determinations of eligibility made on or after August 1, 1990:~~]

(1) For adult related cases, lump-sum income shall be [~~is~~] counted as income in the month received to the extent feasible; any portion of the income remaining shall be [~~is~~] considered as a resource for the following months and considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 2(8)(i) of this administrative regulation;

(2) For AFDC related cases, lump sum income shall be [~~is~~] divided by the medically needy income level and prorated over the resultant number of months; deductions from the lump sum may be allowed for related or extraordinary expenses.

(3) [~~Effective February 1, 1989, lump sum income~~] For individuals eligible under the federal poverty level standards specified in Section 5(2) and (3) of this administrative regulation, lump sum income shall [~~would~~] be divided by the appropriate standard for the eligible group and prorated over the resultant number of months; deductions from the lump sum may be allowed for related or extraordinary expenses.

Section 15. Transferred Resources. (1) Transfer of resources on or before August 10, 1993.

(a) If [~~Effective for determinations of eligibility made on or after October 1, 1989, an individual who transferred property on or before June 30, 1988 for less than fair market value must have a period of ineligibility for medical assistance computed beginning with the month in which the resources were transferred. The period of ineligibility shall be equal to the lesser of twenty four (24) months or the number of months derived by deducting from the uncompensated excess value the actual cost of care on a monthly basis if the individual is institutionalized or $500 for each month from the month of transfer if not institutionalized.~~

~~(2) Effective for determinations of eligibility on or after October 1, 1989, when~~] an institutionalized individual (defined as an individual in a [~~skilled~~] nursing facility[~~, general intermediate care facility,~~] or a

participant in the home and community based (HCB) services waiver program) applies for Medicaid, [~~medical assistance~~] a period of ineligibility shall [~~for payments for such service must~~] be computed if [~~at any time~~] during the thirty (30) month period immediately preceding the application (but on or before August 10, 1993 [~~after July 1, 1988~~]) the individual [~~(~~]or the [~~his~~] spouse [~~with regard to transfers occurring after December 19, 1989~~)] disposed of property for less than fair market value.

(b) The period of ineligibility shall begin [~~for such service (beginning~~] with the month of the transfer and [~~in which the resources were transferred~~)] shall be equal to:

1. The lesser of thirty (30) months; or

2. The number of months derived by dividing the total uncompensated value of the resources [~~so~~] transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state [~~(either intermediate care or skilled nursing care as appropriate for the level of care)~~].

(2) Transfer of resources after August 10, 1993.

(a) If an institutionalized individual (defined as an individual in a nursing facility or a participant in the HCB waiver program) applies for Medicaid, a period of ineligibility for nursing facility or HCB services shall be computed if during the thirty-six (36) month period immediately preceding the application (but after August 10, 1993) assets were transferred, or if during the sixty (60) month period immediately preceding the application (but after August 10, 1993) a trust was created whereby the individual or the spouse disposed of property for less than fair market value.

(b) The period of ineligibility shall begin with the month of the transfer and shall be equal to the number of months derived by dividing the total uncompensated value of the resources transferred by the average cost to a private patient at the time of the application for nursing facility services in the state.

(c) Jointly held resources shall be considered pursuant to 42 USC 1396p(c)(3).

(d) Transfer by the spouse shall be considered pursuant to 42 USC 1396p(c)(4).

(3) For multiple or incremental transfers, the ineligibility periods shall accrue and run consecutively beginning with the month of the initial transfer.

(4) [~~(3)~~] An individual shall not be ineligible for Medicaid [~~medical assistance~~] or an institutional type of service by virtue of subsection (1) or (2) of this section to the extent that the conditions specified in 42 USC 1396p(c)(2)(B), (C) and (D) or Section 21 of this administrative regulation are met, nor shall an individual be ineligible for Medicaid [~~medical assistance~~] or an institutional type of service due to transfer of resources for less than fair market value except in accordance with this section.

(5) [~~(4)~~] The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with 42 USC 1396p(c)(2)(B) or (C)[~~(i)~~] or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with 42 USC 1396p(c)(2)(B) or (C)[~~(i)~~] or is for some reason other than to qualify for Medicaid [~~medical assistance~~] or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource shall be [~~is~~] disregarded. If the resource was transferred for an amount equal to [~~at least~~] the assessed value for tax purposes, the resource shall [~~will~~] be considered as being disposed of for fair market value. [~~Notwithstanding the preceding,~~] If the assessed agricultural value is used for tax purposes the transfer shall be [~~is~~] required to be for an amount equal to the fair market value.

(6) [~~(5)~~] After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property shall [~~would~~] be counted against the permissible amount for nonhomestead property. If retention of the resource shall [~~would~~] not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(7) [~~(6)~~] If retention would result in ineligibility, the cabinet shall [~~will~~] compute a period of ineligibility for Medicaid [~~medical assistance~~] or an institutional type of service as provided for in subsections (1) and (2) of this section.

(8) [~~(7)~~] The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount shall [~~will~~] be granted subject to the following criteria:

(a) ["] Good cause shall be determined to exist if [~~" means that~~] an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion shall [~~may~~] not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded shall not [~~cannot~~] include any amount which is payable by Medicaid, Medicare, or other insurance.

Section 16. Special Provisions for AIS/MR Recipients. Medicaid [~~Medical assistance~~] eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section and in Section 21 of this administrative regulation.

(1) Usual institutional deeming rules shall be applicable.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible as medically needy or on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) If an AIS/MR services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant shall be [~~is~~] determined in the usual manner for an individual who is institutionalized, with the cost of AIS/MR services projected if eligibility is determined on a monthly basis.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(5) In the posteligibility determination of available income, the personal needs allowance includes[~~, effective March 1, 1991,~~] any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as court- ordered child support, alimony, and similar payments resulting from actions by the recipient).

Section 17. Special Provisions for Hospice Recipients. Medicaid [~~Medical assistance~~] eligibility for participants under the Medicaid hospice benefit shall be determined (if [~~when~~] necessary to establish eligibility for Medicaid [~~medical assistance~~] benefits for cases with

income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom shall [~~must~~] spend-down on a quarterly basis), the amount protected for basic maintenance shall be [~~is~~] the usual medically needy standard as shown in Section 4 of this administrative regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination shall be [~~is~~] the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount shall be [~~is~~] forty (40) dollars per month.

(2) If [~~When~~] eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus [~~the room and board rate (applicable for determinations of eligibility made on or after September 1, 1991,~~] the private pay rate for the nursing facility.

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures shall be [~~are~~] used for all medically needy individuals not eligible under the special income level.

(6) In the posteligibility determination of available income the personal needs allowance includes[~~, effective March 1, 1991,~~] any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

Section 18. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medicaid [~~Medical assistance~~] eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for Medicaid [~~medical assistance~~] benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section and in Section 21 of this administrative regulation.

(1) Income protected for basic maintenance of HCB services program participants who are eligible as medically needy or under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant shall be [~~is~~] determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis.

(4) Usual institutional deeming rules shall be applicable.

(5) In the posteligibility determination of available income the personal needs allowance includes[~~, effective March 1, 1991,~~] any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

Section 19. Treatment of [~~Potential Payments from Medicaid Qualifying~~] Trusts. (1) Effective October 1, 1993 with regard to Medicaid qualifying trusts created on or before August 10, 1993, if [~~When~~] an individual (or the [~~his~~] spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, the [~~such~~] trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

(2) Effective October 1, 1993 with regard to trusts created after August 10, 1993, for purposes of determining eligibility in accordance with Section 15(2) of this administrative regulation with regard to trust agreements, the rules provided for under 42 USC 1396p(d)(3) shall be met and shall apply to a trust established by an individual subject to 42 USC 1396p(d)(4).

(a) An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the individuals described under 42 USC 1396p(d)(2)(A)(i), (ii), (iii), and (iv) established the trust other than by a will.

(b) In the case of a trust, the corpus of which includes resources of any other person or persons, the trust rules shall apply to the portion of the trust attributable to the resources of the individual.

(c) Subject to 42 USC 1396p(d)(4), the trust provisions in 42 USC 1396p(d) shall be applied in a manner consistent with 42 USC 1396p(d)(2)(C).

(3) The treatment of trusts and transfer of resources set forth in this section and Section 15 of this administrative regulation shall be waived if it is established by the Department for Medicaid Services that the application would create an undue hardship as determined on the basis of criteria established by the Secretary of the Department of Health and Human Services.

(4) With regard to subsection (1) or (2) of this section, for trusts created on or prior to August 10, 1993, any resources transferred into a previously established trust after August 10, 1993 shall be considered a transfer of resources and subject to an ineligibility period as provided for under Section 15 of this administrative regulation using the thirty-six (36) month transfer rules.

Section 20. Resource Assessment. Pursuant to 42 USC 1396r-5(c)(1)(B), an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of the [~~such~~]

assessment shall exist at the [~~such~~] time as the institutionalized spouse applies for Medicaid [~~medical assistance~~].

Section 21. Protection of Income and Resources of Couple for Maintenance of Community Spouse. 42 USC 1396r-5, provides for special treatment of income and resources for certain institutionalized spouses. The income eligibility and posteligibility provisions are effective October 1, 1989 for persons institutionalized on or after September 30, 1989. The resource provisions are effective with regard to determinations of eligibility made on or after October 1, 1989 for institutionalized persons beginning a continuous period of institutionalization on or after September 30, 1989.

(1) Supersedes other provisions. The provisions of this section supersede any other provisions of this administrative regulation which is inconsistent with them.

(2) Nonapplicability. Except as specifically provided, this section shall [~~does~~] not apply to the determination of what constitutes income or resource or the methodology and standards for determining and evaluating income and resources.

(3) Provisions for treatment of income. The following income provisions shall be applicable.

(a) Separate treatment of income. During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (b) of this subsection, no income of the community spouse shall be deemed available to the institutionalized spouse.

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for Medicaid [~~medical assistance~~], except as otherwise provided in this section of this administrative regulation and regardless of any state laws relating to community property or the division of marital property, the provisions of 42 USC 1396r-5(b)(2)(A), (B), (C), and (D), shall be applicable.

(4) Provisions for treatment of resources. The following resource provisions shall be applicable:

(a) Attribution of resources at time of initial eligibility determinations. In determining the resources of an institutionalized spouse at the time of application for benefits under Medicaid, regardless of any state laws relating to community property or the division of marital property, except as provided in paragraph (b) of this subsection, all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) Nonattributed resources. The following protected amounts shall be deducted from couples' combined countable resources at time of determination of initial eligibility of the institutionalized spouse:

1. The state spousal resource standard; and, if applicable

2. Additional amounts transferred under a court support order; or, if applicable

3. An additional amount designated by a hearing officer.

(c) Exceptions to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. When the institutionalized spouse has assigned to the cabinet any rights to support from the community spouse;

2. When the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the state has the right to bring a support proceeding against a community spouse without the [~~such~~] assignment; or

3. When the cabinet determines that denial of eligibility would work an undue hardship.

(d) Separate treatment of resources after eligibility for benefits established. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for Medicaid benefits, no resources of the community spouse shall be deemed available to the institutionalized spouse. Resources of the institutionalized spouse protected for the needs of the community spouse but not transferred to the community spouse within six (6) months of the initial eligibility determination [~~by the time of the second regularly scheduled redetermination of eligibility (i.e., one (1) year from the month of the initial determination of eligibility)~~] shall be considered available to the institutionalized spouse.

(e) Excess value of an automobile. The equity value of an automobile in excess of prescribed limits which would otherwise be considered available shall [~~is~~] not be included as a countable resource.

(5) Protecting income for the community spouse. The following provisions shall be [~~are~~] applicable with regard to protecting income for the community spouse:

(a) The following allowances shall [~~are to~~] be offset from income of an institutionalized spouse. After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance of forty (40) dollars plus[~~, effective March 1, 1991,~~] any mandatory, nondiscretionary deductions from income (such as court-ordered child support, alimony and similar payments resulting from actions by the recipient);

2. A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse;

3. A family allowance determined in accordance with the definition of other family members maintenance standard; and

4. Amounts for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard shall be [~~is~~] set at $1,500 per month, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual, as appropriate, by a hearing officer.

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.

(6) Permitting transfer of resources to community spouse. The following provisions shall be applicable with regard to transfers of resources from an institutionalized spouse.

(a) Permitted transfer. An institutionalized spouse may, without regard to the usual prohibition against disposal of assets for less than fair market value, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account the [~~such~~] time [~~as may be~~] necessary to obtain a court order under paragraph (c) of this subsection.

(b) Establishment of the community spouse resource allowance. The community spouse resource allowance shall be [~~is~~] set at $60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; for an individual, the allowance may be a higher amount established by a hearing officer, or a higher amount transferred under

a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. As specified in 42 USC 1396r-(f)(3), if a court has entered an order against an institutionalized spouse for the support of a community spouse, the usual prohibition against disposal of assets for less than fair market value shall not apply to amounts of resources transferred pursuant to the [~~such~~] order for the support of the spouse [~~of a family member~~].

(7) Prohibited transfers. Except for transfers of resources to the community spouse as specified in subsection (6) of this section, the transfer of resource policies defined in Section 15 of this administrative regulation apply.

(8) Requirement for notice and fair hearings. The following notice and fair hearings requirements shall be [~~are~~] applicable:

(a) Notice. Upon a determination of eligibility for Medicaid of an institutionalized spouse or a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse, the cabinet shall notify both spouses (if upon determination of Medicaid eligibility of the institutionalized spouse) or the spouse making the request (if that is the situation) of the amount of the community spouse monthly income allowance, of the amount of any family allowance, of the method for computing the amount of the community spouse resources allowance, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(b)1. Fair hearings. Both the institutionalized spouse and community spouse shall be [~~are~~] entitled to a fair hearing if dissatisfied with the determination of the following:

a. The community spouse monthly income allowance;

b. The amount of monthly income determined to be otherwise available to the community spouse;

c. The attribution of resources at time of initial eligibility determination; or

d. The determination of the community spouse resource allowance.

2. Revision of monthly maintenance needs allowance. If either the institutionalized spouse or community spouse establishes during the hearing that the community spouse needs income, above the level otherwise provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the monthly maintenance needs allowance otherwise provided for, an amount adequate to provide the [~~such~~] additional income that [~~as~~] is necessary.

3. Revision of community spouse resource allowance. If either spouse establishes during the hearing process that the community spouse resource allowance (in relation to the amount of income generated by the [~~such an~~] allowance) is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance otherwise allowed, an amount adequate to provide the [~~such a~~] monthly maintenance needs allowance.

[~~Section 22. Effective Date. The amendments to this regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1991 except as specified in Sections 6 and 17 of this regulation.~~]

HAROLD R. BLOM, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 15, 1993

FILED WITH LRC: November 1, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom

(1) Type and number of entities affected: All potential Medicaid recipients.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $3 million (savings).

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or 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: There is no substantive administrative cost associated with this change.

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the provisions of OBRA '93 codified at 42 USC 1396p relating to the Medicaid Program are mandatory and shall be adopted.

2. State compliance standards. This administrative regulation establishes eligibility criteria rather than compliance standards. The amendments proposed are consistent with the established policy of the Commonwealth to comply with federal mandates as enunciated in KRS 205.520(3).

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation implements the federally mandated standards relating to trusts and transfer of resources set forth in OBRA '93 codified at 42 USC 1396p.

4. Will this administrative regulation impose stricter requirements,

or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:027. Payments for dental services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for dental services.

Section 1. Definition. For purposes of determination of payment, the following definitions shall apply:

(1) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

(2) "Medically high risk patient" is defined as a patient in one (1) of the following classifications: heart disease, respiratory disease, chronic bleeder, uncontrollable patient (retardate, emotionally disturbed); or other (car accident, high temperature, massive infection, etc.).

Section 2. Reimbursement. [~~For services provided on or after July 1, 1991,~~] The cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at the dentist's usual and customary actual billed charge up to the fixed upper limit per procedure established by the cabinet at 90 [~~100~~] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

Section 3. Hospital Inpatient Care. (1) Hospitalized inpatient care, which shall be [~~is~~] paid in the same manner as shown in Section 2 of this administrative regulation, refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. Any dentist submitting a claim for hospital inpatient care benefits must agree to accept payment in full for services rendered that patient during that admission.

(2) A general dentist may submit a claim for hospital inpatient services for the patient termed "medically a high risk." [~~Medically high risk is defined as a patient in one (1) of the following classifications:~~

~~(a) Heart disease;~~

~~(b) Respiratory disease;~~

~~(c) Chronic bleeder;~~

~~(d) Uncontrollable patient (retardate, emotionally disturbed); or~~

~~(e) Other (car accident, high temperature, massive infection, etc.).~~]

Section 4. Reimbursement Exceptions. (1) [~~Effective with regard to services provided on or after July 1, 1991,~~] The following procedures [~~specified in this section~~] shall be paid at the lower of the provider's usual and customary actual billed charge or the [~~have the following~~] fixed upper limits as shown:

(a) Emergency call (intermediate level of service), twenty-eight (28) dollars and ten (10) cents; [~~$31.25; and~~]

(b) Comprehensive oral examination (limited to one (1) per provider per recipient per year), sixteen (16) dollars and eighty-seven (87) cents; [~~$18.75.~~]

(c) Panoramic film, thirty-one (31) dollars and fifty (50) cents;

(d) Pin retention therapy, eight (8) dollars;

(e) Scaling and root planing, fifty-five (55) dollars and fifty-five (55) cents;

(f) Relining lower denture, sixty-six (66) dollars and ninety-four (94) cents;

(g) Adult obturator (Temporary), $650;

(h) Adult obturator (Permanent), $1,350; and

(i) Pediatric obturator, $300.

(2) [~~Effective with regard to services provided on or after July 1, 1991,~~] The following procedures [~~specified in this section~~] shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed upper limit as shown [~~specified in this section~~] with preauthorization required for all procedures except for orthodontic consultation[~~. The procedures and fixed fees are as follows~~]:

(a) Orthodontic consultation, $100, except that the fixed fee shall be [~~is~~] fifty (50) dollars if the provider is referring the recipient to a specialist or the preauthorization for orthodontia services is not approved or a request for preauthorization of orthodontia services is not made;

(b) Preauthorized early phase orthodontic services for moderately severe handicapping malocclusions, $1,200 for orthodontists and $1,080 for general dentists;

(c) Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,600 for orthodontists and $1,440 for general dentists;

(d) Preauthorized orthodontic services for severe handicapping malocclusions, $2,400 for orthodontists and $2,160 for general dentists;

(e) Retention visits, thirty (30) dollars [~~$30~~]; and

(f) Stabilization visit, fifteen (15) dollars [~~$15~~].

Section 5. Oral surgeons shall be treated in the same manner as physicians for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 1:010, Payments for physicians' services.

Section 6. Implementation Date. The changes shown in this administrative regulation shall be applicable with regard to services provided on or after November 1, 1993.

HAROLD R. BLOM, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 15, 1993

FILED WITH LRC: October 28, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administra-

tive 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: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom

(1) Type and number of entities affected: All dentists participating in the Medicaid program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $3.3 million (savings).

2. Continuing costs or savings: $3.3 million (savings).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:038. Hearing and vision services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.140, 441.30, 42 USC 1396a, b, d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to the hearing services and vision care services for which payment shall be made by the Medicaid Program in behalf of both categorically needy and medically needy.

Section 1. Hearing Services. (1) Audiological benefits. Coverage shall be limited to the following services provided to children under age twenty-one (21) by certified audiologists:

(a) Complete hearing evaluation;

(b) Hearing aid evaluation;

(c) A maximum of three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid, the visits to be related to the proper fit and adjustment of that hearing aid;

(d) One (1) follow-up visit six (6) months following fitting of a hearing aid, to assure patient's successful use of the aid.

(2) Hearing aid benefits. Coverage shall be provided to children under age twenty-one (21) on a preauthorized basis for any monaural hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. Binaural hearing aids shall not be covered.

Section 2. Vision Care Services. Coverage for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by ophthalmologists and optometrists, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided to children under age twenty-one (21), only, on a preauthorized basis. Coverage for eyeglasses shall be limited to two (2) pairs of eyeglasses per year per person. This limitation includes the initial eyeglasses and one (1) replacement per year or two (2) replacements per year. [~~Coverage for initial and extensive visits shall be limited to one (1) visit per patient per provider per twelve (12) month period.~~]

Section 3. Vision Services Manual. The vision services manual specifies the conditions for participation, services covered, and limitations for the vision services component of the Medicaid Program. The vision services manual, dated October 1, 1993, incorporated by reference in this administrative regulation may be reviewed during regular working hours (8 a.m. to 4:30 p.m. Eastern Standard Time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 4. 907 KAR 1:410, Incorporation by reference of the vision services manual, is repealed.

HAROLD R. BLOM, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 15, 1993

FILED WITH LRC: October 28, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom

(1) Type and number of entities affected: All providers of vision

services participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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: Any costs or savings were reflected in the companion regulation, 907 KAR 1:040, Payments for vision care services.

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:040. Payments for vision care services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for vision care services.

Section 1. Definitions. For purposes of determination of payment the following definition shall be applicable: "usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) Reimbursement for covered services, except materials, shall be the optometrists' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at ninety (90) [~~100~~] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. (1) Reimbursement for covered services (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic dispensers to eligible recipients shall be the ophthalmic dispensers' usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at ninety (90) [~~100~~] percent of the median billed charge using 1989 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service. Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation (if any) due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) Reimbursement for materials (eyeglasses or parts of eyeglasses) shall be made at the laboratory cost of the materials not to exceed upper limits for materials as set by the cabinet. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipients's medical records for postpayment review.

Section 4. Reimbursement for other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement/repair parts for eyeglasses, are considered to be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges shall not be made to the cabinet or the recipient for these items.

Section 5. Effect of Third Party Liability. If [~~When~~] payment for a covered service is due and payable from a third party source, such as private insurance, or some other third party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third party payment.

Section 6. Limitations. (1) Program reimbursement for eyeglasses shall be inclusive. The cost of both laboratory materials and dispensing fees shall be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, no responsibility for reimbursement shall attach to the cabinet and no bill for the service shall be paid by the cabinet. This limitation shall not, however, preclude the issuance of billings for the purpose of establishing the liability of, or collecting from, liable third parties.

(2) Telephone contacts shall be [~~are~~] excluded from payment.

(3) Contact lenses shall be [~~are~~] excluded from payment.

(4) Safety glasses shall be [~~are~~] covered when medically necessary, subject to prior authorization.

Section 7. Optometrist laboratory services shall be reimbursed based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

Section 8. Implementation Date. The changes shown in this administrative regulation shall be applicable for services provided on or after November 1, 1993.

HAROLD R. BLOM, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: October 15, 1993
FILED WITH LRC: October 28, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom

(1) Type and number of entities affected: All providers of vision care services participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $1 million (savings).

2. Continuing costs or savings: $1 million (savings).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:540. Eligibility requirements and benefits under [~~for~~] the Kentucky Hospital [~~Indigent~~] Care [~~Assurance~~] Program (KHCP) [(~~HICAP~~)].

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.640 [~~205.575~~]

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Kentucky Hospital Care Program (KHCP) [HICAP] program, which is a program of hospital care for the indigent provided by Kentucky hospitals participating in the Kentucky Medicaid Program. The cabinet is responsible for establishing eligibility guidelines for determinations of KHCP eligibility to be made by the hospitals. This administrative regulation sets forth provisions relating to the eligibility requirements and benefits for recipients under KHCP [HICAP].

Section 1. Definitions. (1) "Family unit" means the parents, stepparents, their minor children and stepchildren living in the same household; unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household; or a child under age eighteen (18), legal guardian and the legal guardian's family living in the same household. A minor child who is also a minor parent and who lives with his [~~or her~~] parents is included in the family unit along with his [~~or her~~] child; if the minor parent, his [~~or her~~] child and the child's other parent, regardless of their marital status, are in the same household, they shall be [~~are~~] considered a separate family unit from any other family unit in that household.

(2) "Kentucky Hospital Care Program (KHCP)" is a program of inpatient and outpatient hospital care for Kentucky's indigent citizenry provided by Kentucky hospitals participating in the Kentucky Medicaid Program.

(3) [(~~2~~)] "Minor children" means individuals under the age of twenty-one (21) living with a parent, or under the age of eighteen (18) living with a legal guardian in the same household, or one (1) of the previously described children attending college or a similar type of higher education facility.

(4) [(~~3~~)] "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(5) [(~~4~~)] "Self-support" means a demonstration by the minor child that he [~~or she~~] is paying more than fifty (50) percent of his [~~or her~~] living expenses (i.e., proof of wages versus expenditures for living expenses, etc.).

Section 2. KHCP Eligibility Manual. (1) The KHCP Eligibility Manual, dated October 1, 1993, which describes the processes for determining KHCP eligibility, is incorporated by reference.

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

(3) A fee shall be charged for the KHCP Eligibility Manual not to exceed the approximate cost of copying and materials.

Section 3. [~~2.~~] Eligibility Requirements. (1) For an individual or family unit to be KHCP [HICAP] eligible the following requirements shall be met:

(a) [(~~1~~)] The individual or family unit shall be a resident(s) of Kentucky. Transients and non-U.S. citizens in visa status (i.e., visitors, students, etc.) shall not be eligible for KHCP [HICAP];

(b) [(~~2~~)] The individual's or family unit's income shall not exceed 100 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United State government, and revised annually except for Medicaid recipients

receiving additional days of coverage per hospital stay based on medical necessity determined in accordance with 907 KAR 1:012, Inpatient hospital services; and

(c) The individual or family unit shall be encouraged to apply for Medicaid at the local Department for Social Insurance office if potentially eligible.

[~~(3) The individual or family unit must apply for ongoing Medicaid benefits if potentially eligible before a determination can be made that the individual or family unit is HICAP eligible. If an individual or family unit that is potentially eligible for ongoing Medicaid refuses to make an application for Medicaid benefits but applies for HICAP benefits, a finding of ineligibility for HICAP benefits shall be made. (Ongoing Medicaid does not include spenddown or time limited Medicaid benefits.) When a Medicaid application is made under this circumstance, the HICAP inquiry protects the HICAP application date.~~]

(2) Unless otherwise excluded under Section 4 of this administrative regulation, all Medicaid recipients shall be determined KHCP eligible without further verification of eligibility except for the following groups:

(a) Individuals in long-term care situations. These individuals are those in nursing facilities, intermediate care facilities for the mentally retarded, the home and community based services waiver program, the alternative intermediate services for the mentally retarded waiver program, and psychiatric hospitals;

(b) Individuals eligible for Medicaid based on inclusion in a group with an income standard exceeding 100 percent of the poverty level. These include pregnant women with eligibility based on income of less than 185 percent of the poverty level and children with eligibility based on income less than an applicable standard of 185 percent or 133 percent of the poverty level; and

(c) Individuals eligible for Medicaid based on spenddown.

(3) Any Medicaid recipient receiving additional days of coverage per hospital stay, based on medical necessity determined in accordance with 907 KAR 1:012, shall be determined KHCP eligible without further verification.

(4) For Medicaid recipients not determined KHCP eligible without verification, the determination of KHCP eligibility shall be made by comparing the individual's or family's income (as documented) to 100 percent of the poverty level for the family size.

(5) Individuals or families found eligible prior to July 1, 1993 for the Hospital Indigent Care Assurance Program for a period of time extending past July 1, 1993 shall be determined eligible for KHCP without further verification for that portion of the period of time extending past July 1, 1993.

Section 4. [~~3.~~] Exclusions from Eligibility. The following shall not be eligible for coverage under KHCP [~~HICAP~~]:

(1) Individuals within a correctional system (i.e., inmates of jails, prisons, etc.);

(2) Individuals in the custody of a unit of government which is responsible for coverage of the acute care needs of the individuals, with the exception of individuals in a state-operated psychiatric hospital; [~~and~~]

(3) Individuals residing in a psychiatric facility between the ages of twenty-two (22) and sixty-four (64), regardless of income;

(4) Medicaid recipients who have been decertified by the peer review organization for not meeting psychiatric level of care; and

(5) KHCP eligibility shall not exist for Medicaid recipients during a hospital stay (during the first fourteen (14) day period) which would not have been approved or covered under the Medicaid Program.

[~~(3) Individuals who receive ongoing Medicaid in any category, including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI).~~]

Section 5. [~~4.~~] Eligibility Periods. The following provisions shall be applicable for eligibility periods:

(1) For inpatient hospital stays, each determination of eligibility shall be for the period of hospitalization. [~~month of application and two (2) subsequent months with a retroactive determination of eligibility for the three (3) months preceding the month of application if the individual has had a hospitalization during that period of time. The Commissioner of the Department for Medicaid Services may determine on an individual case basis that an additional retroactive period is necessary when the applicant presents extenuating circumstances.~~]

(2) For major or minor outpatient procedures or services, a determination of eligibility shall be for the date or dates of service.

(3) A retroactive determination of eligibility shall be completed for inpatient hospital stays, and major or minor outpatient procedures or services for any period of time preceding the month of application. No retroactive coverage shall be provided for a period of time prior to July 1, 1993 [~~January 1, 1991~~].

Section 6. [~~5.~~] Income Considerations. Eligibility shall be [~~is~~] determined by comparing the family unit's (or that of the individual not living with other family members) gross income to the poverty income guidelines for the appropriate family size. In comparing the family unit's gross income to 100 percent of the official poverty income guidelines, the following policies shall be applied:

(1) For the application month [~~and subsequent months~~], an average income of the most recent two (2) calendar months shall be used;

(2) For retroactive eligibility, actual income received for those months shall be used;

(3) For annualized income, the most recent tax return shall be used;

(4) For seasonal, contract and occasional work, an average of the actual income of the most recent two (2) calendar months [~~received~~] shall be used;

(5) If it is anticipated that no income will be received for future months due to illness, accident, or other reasons, no income shall be considered as available;

(6) If it is anticipated that income will increase or decrease, the anticipated income shall be used;

(7) [~~(6)~~] The gross income or adjusted gross income for self-employment shall be used; the adjusted gross income shall be determined by allowing work expense deductions that are directly related to producing the goods or services and without which the goods or services could not be produced;

(8) [~~(7)~~] Income of all family unit members, including ineligible members, shall be considered and compared to the appropriate KHCP [~~HICAP~~] family size;

(9) [~~(8)~~] Parental income shall not be considered in eligibility determinations for children age twenty-one (21) or older. If the child, regardless of age, is not living with the parent or attending college or a similar type of higher education facility, parental income shall not be considered;

(10) [~~(9)~~] A legal guardian's income shall be considered in determining eligibility for children living in the same household as the legal guardian until the child reaches the age of eighteen (18);

(11) [~~(10)~~] A grandparent's income shall not be considered for grandchildren living with the grandparent (but not also living with the minor parent) unless the grandparent is the legal guardian;

(12) [~~(11)~~] Income from a common law spouse living in the same household shall be considered. (Common law marriages shall be [~~are~~] recognized if recognized by other states or the couple are holding themselves out to the community as married);

(13) [~~(12)~~] State supplemental payments to individuals in personal care homes shall be excluded from consideration; and

(14) [~~(13)~~] Lump sum payments shall be considered income in the month received.

Section 7. Resource Considerations. Resources shall not be considered in determining KHCP eligibility.

Section 8. [6.] Verification Requirements. Except as specified in Section 3 of this administrative regulation, the cabinet shall [generally] require verification in accordance with [of] the following in eligibility determinations (although [it may require] verification of residency should be accomplished in questionable situations):

(1) Income verification for all family unit members shall be required for inpatient hospital admissions and major outpatient procedures or services. Verification shall be required every six (6) months unless the family unit's income has increased. If the family unit's income has increased, the hospital shall not be required but may require verification of income if the newly reported income exceeds the KHCP income limits. If the family unit alleges zero income, verification may be obtained or at the option of the hospital waived;

(2) Income verification shall not be required for minor outpatient procedures or services; and

(3) [(2)] Self-support verification for children under age twenty-one (21) not living with parents and who attend college or a similar type of higher education facility shall be required.

Section 9. [7.] Dual Eligibility. The individual or family unit may be referred to apply for Medicaid benefits. The following provisions shall be applicable for dual eligibility.

(1) An individual may be KHCP [HICAP] eligible and simultaneously [subsequently] determined Medicaid eligible. An individual may [shall not] apply for ongoing Medicaid and KHCP [HICAP] eligibility concurrently.

(2) An individual may apply for both KHCP [HICAP] and Medicaid spenddown eligibility.

(3) For Medicaid spenddown eligibility any hospital expense attributed to the individual's KHCP [HICAP] eligibility shall not be considered as an incurred cost in determining Medicaid spenddown eligibility.

(4) Individuals who are eligible as qualified Medicare beneficiaries (QMBs) only recipients may apply for KHCP [HICAP] eligibility.

(5) An individual may apply for both KHCP and SSI Medicaid benefits.

(6) If an individual or family unit is subsequently approved for Medicaid or QMB benefits during a period of KHCP eligibility, the hospital may bill the Medicaid Program in accordance with Medicaid policy shown in 907 KAR 1:013 and 907 KAR 1:015 provided the hospital reports the KHCP adjustment prior to billing the Medicaid Program.

(7) A separate determination for KHCP eligibility using extended requirements shall not be made for Medicaid recipients determined KHCP eligible in accordance with this administrative regulation.

Section 10. [8.] Fair Hearing. (1) An applicant may request a fair hearing on his KHCP [or her HICAP] eligibility determination within thirty (30) days of the denial or approval date. [in accordance with 907 KAR 2:055.]

(2) Each hospital shall be responsible for conducting hearings to determine if KHCP eligibility was determined correctly and for correcting any errors in KHCP eligibility which have been made.

(3) The hearings shall be conducted by impartial hospital staff not involved in the KHCP eligibility determination.

(a) Hearings shall be conducted within thirty (30) days of the date of the hearing request.

(b) During the hearing:

1. The appellant shall be provided an opportunity to review evidence against him;

2. To cross-examine witnesses against him;

3. To present evidence in his behalf; and

4. To be represented by counsel.

(c) Hospital decisions regarding the hearing shall be rendered within fourteen (14) days of the hearing and a copy of the decision provided to the KHCP applicant and the Department for Medicaid Services.

(d) The hearing process may be terminated at any time a corrected decision of KHCP eligibility is made in favor of the potential KHCP recipient with appropriate notice of KHCP eligibility and termination of the hearing process required.

(e) Further appeal may be to the local court having competent jurisdiction.

(2) If a hospital [refuses admission or provision of a particular service to a HICAP eligible individual, or otherwise] contests medical necessity (whether before or after the fact) for a Medicaid recipient with regard to additional days of inpatient coverage, the Medicaid Peer Review Organization (PRO) shall be contacted by the hospital for a determination of the appropriateness of the [admission or] service using Medicaid standards of medical necessity; the decision of the PRO shall be binding upon the hospital for KHCP [HICAP] purposes. It shall be the PRO's responsibility to advise the hospital, the KHCP [HICAP] recipient, and the recipient's physician, in writing, of the PRO's decision. If the KHCP [HICAP] recipient is dissatisfied with the decision of the PRO, he may appeal the decision in accordance with 904 KAR 2:055.

Section 11. Benefits. Benefits under KHCP shall be as follows:

(1) Medicaid recipients shall receive any necessary days of coverage for hospital stay as specified in KRS 205.640;

(2) KHCP recipients, including individuals with a pending KHCP application or Medicaid application which may result in KHCP deemed eligibility, shall not be billed for hospital services provided by Medicaid participating disproportionate share hospitals in accordance with KRS 205.640.

Section 12. [9.] The provisions of this administrative regulation shall be applicable for determinations of eligibility made, and services provided, on or after July 1, 1993 [September 1, 1991].

HAROLD R. BLOM, Commissioner
FONTAINE BANKS, JR., Secretary
APPROVED BY AGENCY: November 11, 1993
FILED WITH LRC: November 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom

(1) Type and number of entities affected: All potentially eligible Kentucky Hospital Care Program recipients and all disproportionate share hospitals participating in the Kentucky Hospital Care Program.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, NOVEMBER 15, 1993

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:170. In-kind contributions.

RELATES TO: KRS 121.015(6)(b), (c), (d), 121A.010(11)(a)(2), (3), (4)

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121A.020(7)

NECESSITY AND FUNCTION: KRS 121.015(6)(b), (c), and (d) and 121A.010(11)(a)(2), (3), and (4) include the payment for or provision of certain goods and services to a candidate, slate of candidates, committee, or contributing organization within the definition of "contribution". Such payments are known as "in-kind" contributions. It is necessary to promulgate this administrative regulation to clearly identify the circumstances under which a contribution falls within the in-kind category.

Section 1. (1) A candidate, slate of candidates, committee, or contributing organization shall not conspire with an individual or other entity to disguise an illegal contribution as an in-kind contribution.

(2) It shall be considered an in-kind contribution when an individual or other entity provides direct goods or services to a candidate, slate of candidates, committee, or contributing organization or if an individual purchases goods or services from a third party for the benefit of a candidate, slate of candidates, committee, or contributing organization.

(3) A business enterprise may make an in-kind contribution to a candidate, slate of candidates, committee, or contributing organization provided, however, that the business enterprise is not incorporated. The owner of a corporation may make personal in-kind contributions provided that no corporate funds or assets are involved, or, if corporate property such as copiers, telephones, or other office equipment are utilized, the actual costs are billed to the owner and reimbursed with personal funds, and the cost does not exceed the applicable individual contribution limit contained in KRS 121.150. A candidate shall not accept the use of the assets of any corporation unless the fair market value is billed to the campaign and paid for with campaign funds.

(4) If goods or services are provided at less than the rate normally charged, the amount of the in-kind contribution shall be the difference between the usual and normal charge for the goods and services at the time of the contribution and the amount actually charged.

(5) The payment by any person of compensation for the personal services of another if those services are rendered without charge to a candidate, slate of candidates, committee, or contributing organization shall be an in-kind contribution. No compensation shall be considered paid to any employee under the following conditions:

(a) If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time;

(b) No contribution results where an employee engages in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his own to use as he sees fit; or

(c) No contribution results where the time used by the employee to engage in activity for the benefit of a candidate, slate of candidates, committee, or contributing organization is bona fide, although compensable, vacation or other earned leave time.

Section 2. A contribution made under the following circumstances shall not be considered an in-kind contribution:

(1) Payment for goods and services previously or simultaneously acquired by a candidate, slate of candidates, committee, or contributing organization; or

(2) Payment of a debt with cash received by a candidate, slate of candidates, committee, or contributing organization without depositing the funds into the campaign account and complying with all applicable reporting requirements.

Section 3. (1) A candidate, slate of candidates, committee, or contributing organization shall not attempt to circumvent the contribution limitations of KRS 121.150 or the contribution and expenditure limits of KRS Chapter 121A by conspiring with an individual, business enterprise, or other entity to engage in activity which would otherwise constitute an independent expenditure for the benefit of the candidate, slate of candidates, committee, or contributing organization.

(2) Candidates, slates of candidates, committees, or contributing organizations shall have no duty to report expenditures made on their behalf which qualify as independent expenditures. They shall report receipt of in-kind contributions resulting from expenditures made on their behalf and with their direct or indirect cooperation, consent, request, suggestion, or consultation.

JOSEPH H. TERRY, Chair

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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 to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation affects all candidates for public office in Kentucky as well as individuals who contribute to those candidates.

(a) Direct and indirect costs or savings to those affected:

1. First year: No direct or indirect cost will be associated with this administrative regulation.

2. Continuing costs or savings: No direct or indirect cost will be associated with this administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition: None

(b) Reporting and paperwork requirements: All in-kind contributions in excess of $100 per election must be reported to the Registry as provided in KRS 121.180. There will be no additional paperwork and reporting requirements as a result of this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will result in no additional direct or indirect cost to the agency.

2. Continuing costs or savings: This administrative regulation will result in no additional direct or indirect cost to the agency.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements will result to the agency.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Because the law is not explicit as to those contributions which qualify as in-kind, it was necessary to set criteria through the promulgation of this administrative 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? Tiering is not applied because the provisions of this administrative regulation apply uniformly to all candidates and contributors.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:180. Extension of credit to candidates, campaign committees, or political issues committee.

RELATES TO: KRS 121.180(7)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY AND FUNCTION: KRS 121.180(7) provides that if the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance or outstanding debt, the entity shall continue to file supplemental reports until all debts have been settled and any outstanding balance depleted. Except for debts incurred in campaigns prior to January, 1989, only candidates may contribute after an election to defray outstanding debts. As a result, obligations owed by a candidate are of necessity assumed by the candidate personally. Regardless of whether an outstanding debt is the result of a pre-1989 campaign or subsequent election, the failure to settle a debt may result in a contribution, and often an illegal corporate contribution, or a contribution in excess of the contribution limit in effect at the time of the election. It is necessary to promulgate this administrative regulation to establish the criteria on which the registry shall determine if an outstanding debt has been converted to a contribution.

Section 1. Scope. This administrative regulation shall apply only to debts incurred for elections held subsequent to November, 1993.

Section 2. Extensions of credit to candidates, campaign committees, or political issues committees.

(1) For purposes of this section, an "unsatisfied extension of credit" means an outstanding debt which has not been satisfied within a reasonable time after the date of an election and which has not been assumed by a candidate personally.

(2) An unsatisfied extension of credit through deferred billing or payment for goods and services rendered to a candidate, campaign committee, or political issues committee shall be construed as a campaign contribution if:

(a) The transaction was entered into with no reasonable expectation of repayment;

(b) The transaction is based upon terms and conditions not available to other customers served by the creditor;

(c) The transaction is not a transaction between two (2) unrelated parties bargaining at arms length; or

(d) The transaction constitutes a significant deviation from the creditor's regular commercial practices.

(3) An extension of credit through deferred billing or payment for goods and services rendered to a candidate, campaign committee, or political issues committee, may be considered a campaign contribution if:

(a) The creditor abandons efforts to enforce or collect the debt on grounds that are not commercially reasonable;

(b) The creditor abandons, forgives, or cancels the debt under conditions not generally available to other customers of the creditor;

(c) The creditor abandons, cancels or forgives the debt for no reasonable business purpose; or

(d) In the case of a creditor who is an individual or unincorporated entity, if any of the conditions in this subsection are determined to exist, and the amount of the debt forgiven, abandoned, or cancelled, when added to other monetary or in-kind contributions made by the creditor exceed the contribution limits in effect at the time of the extension of credit.

(4) An extension of credit through deferred billing or payment for goods and services rendered by a creditor to a candidate or campaign committee or the cancellation, forgiveness, or abandonment of such a debt may be determined by the registry to be a campaign contribution if a totality of the evidence indicates that the transaction is not commercially reasonable. The mere passage of time shall not be determinative, nor shall the finding that a transaction was merely unwise. In making the determination, the registry shall consider:

(a) Whether owners or controllers of the creditor are contributors to or political supporters of the candidate;

(b) Whether the amount of credit extended exceeds the amount of credit extended to nonpolitical customers of the creditor; and

(c) Whether the terms under which the credit was extended are substantially different than the terms and conditions generally applied in transactions between the creditor and its nonpolitical customers.

JOSEPH H. TERRY, Chair

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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 to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation affects all candidates, campaign committees, political issues committees, and also indirectly affects creditors of those entities. The administrative regulation shall apply only to debts incurred for elections held subsequent to November, 1993.

(a) Direct and indirect costs or savings to those affected:

1. First year: No direct or indirect cost will result from the promulgation of this administrative regulation.

2. Continuing costs or savings: No direct or indirect cost will result from the promulgation of this administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition: None

(b) Reporting and paperwork requirements: The only additional paperwork resulting from this administrative regulation will be that associated with actions before the Registry in which the determination will be made as to whether an unsatisfied debt has become a contribution.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will result in no additional direct or indirect cost to the agency.

2. Continuing costs or savings: This administrative regulation will result in no additional direct or indirect cost to the agency.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The agency will experience some increase in paperwork associated with actions before the registry in which the determination will be made as to whether an unsatisfied debt has become a contribution.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The provisions of this administrative regulation establish fair guidelines to be used by the registry in determining whether an outstanding debt has become a contribution.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? Tiering is not applied because the provisions of this administrative regulation will apply uniformly to debts incurred subsequent to 1993.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 2:190. Committee affiliation.

RELATES TO: KRS 121.150(7)

STATUTORY AUTHORITY: KRS 121.120(1)(g), 121.150(7)

NECESSITY AND FUNCTION: KRS 121.150(7) provides that permanent committees affiliated by bylaws, structure, or registration, as determined by the registry, shall be considered one (1) committee for purposes of the contribution limitations contained in KRS 121.150. It is necessary to promulgate this administrative regulation to establish guidelines to be followed by the registry in making the affiliation determination.

Section 1. (1) For purposes of applying the contribution limits contained in KRS 121.150, permanent committees shall be considered affiliated committees if they are established, financed, maintained, or controlled by or in common control with:

(a) A single corporation or its subsidiaries;

(b) A single national or international union or its state and local unions or subordinate organizations; and

(c) A membership organization, other than a political party committee, including a trade or professional association or group.

(2) The registry may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one (1) sponsoring organization and a committee established by another organization to determine whether the committees are affiliated. In determining whether committees not otherwise covered by this administrative regulation are affiliated for purposes of contribution limitations, the registry may consider the circumstantial factors described in this subsection in the context of the overall relationship between the entities. Such factors include, but shall not be limited to:

(a) Whether a sponsoring organization of one (1) committee owns a controlling interest in the voting stock or securities of the sponsoring organization of another committee;

(b) Whether a sponsoring organization or committee has the authority or ability to direct or participate in the governance of another sponsoring organization or committee through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures;

(c) Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote, or otherwise control the officers or other decisionmaking employees or members of another sponsoring organization or committee;

(d) Whether a sponsoring organization or committee has a common or overlapping membership or common contributors with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees;

(e) Whether a sponsoring organization or committee has any members, officers, or employees who were members, officers, or employees of another sponsoring organization or committee which indicates the creation of an alter ego of the original committee; and

(f) Whether a sponsoring organization or committee provides funds or goods in a significant amount or on an ongoing basis to another sponsoring organization or committee, such as through direct or indirect payments for administrative, fundraising, or other costs.

Section 2. No person, organization, or committee shall establish an entity which would qualify as a contributing organization as defined in KRS 121.035 for the purpose of circumventing the contribution limitations contained in KRS 121.150 and the affiliation guidelines established by this administrative regulation.

JOSEPH H. TERRY, Chair

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1993, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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 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 to: George Russell, Executive Director, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 564-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This administrative regulation applies to all permanent committees registered with the Kentucky Registry of Election Finance and their affiliates.

(a) Direct and indirect costs or savings to those affected:

1. First year: No direct or indirect cost will result from the promulgation of this administrative regulation.

2. Continuing costs or savings: No direct or indirect cost will result from the promulgation of this administrative regulation.

3. Additional factors increasing or decreasing costs (note any

effects upon competition: None

(b) Reporting and paperwork requirements: No additional paperwork and reporting requirements will result from this administrative regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will result in no additional direct or indirect cost to the agency.

2. Continuing costs or savings: This administrative regulation will result in no additional direct or indirect cost to the agency.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some additional paperwork requirements may result through the submission of documentation by permanent committees related to the question of whether or not a particular committee is an independent committee or an affiliate of another committee.

(3) Assessment of anticipated effect on state and local revenues: No significant effect on state and local revenues is expected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative were considered because the registry is charged with the responsibility for making the affiliation determination.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting Provisions: None

(6) Any additional information or comments: None

TIERING: Is tiering applied? Tiering is not applied because the provisions of this administrative regulation will apply uniformly to all permanent committees.

DEPARTMENT OF PERSONNEL

101 KAR 2:105. Sick leave sharing procedures.

RELATES TO: KRS 18A.030, 18A.110

STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.197

NECESSITY AND FUNCTION: KRS 18A.197(g) requires the Department of Personnel to promulgate procedural administrative regulations to implement the sick leave sharing program.

Section 1. 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 similarly close blood or legal 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 completely incapable of performing the essential duties of his job. The ten (10) consecutive days of leave required for eligibility may be leave with or without pay. Sick leave sharing shall not be authorized for mere convenience or employee preference.

(2) Sick leave shall not be transferred in increments of less than seven and one-half (7.5) hours.

(3) 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.

(4) The applicant for sick leave sharing shall be responsible for filing the appropriate medical certificates and applications. Donated sick leave shall not be utilized retroactively except to cover the period between the date the request was submitted and the date of approval by the appointing authority.

(5) The sick leave sharing recipient shall be responsible for monitoring the amount of sick leave donated and used.

(6) Donated sick leave shall be used on consecutive days except as provided by subsection (7) of this section. Any leave that an employee accrues while receiving donated sick leave shall be used before donated sick leave.

(7) When the recipient of donated leave returns to work, unused donated leave shall be restored to the donors, on a pro rata basis unless the recipient provides medical evidence that he will require continued, periodic medical treatment relating to the original condition for which leave was donated.

(8) 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.

(9) 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.

(10) An employee receiving workers' compensation benefits is eligible to receive shared sick leave to maintain a regular level of pay.

BRERETON C. JONES, Governor

LOWELL W. CLARK, Commissioner

APPROVED BY AGENCY: November 15, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, December 22, 1993, at 9:30 a.m. in Room 392 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 1993, 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: Daniel F. Egbers, Managing Attorney, Department of Personnel, Capitol Annex, Room 204, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact: Daniel F. Egbers

(1) Type and number of entities affected: All appointing authorities and employees in the executive department subject to KRS Chapter 18A.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Availability of sick leave sharing is included in the KRS 18A.916 and 18A.197. The Department of Personnel has developed a form to be used in conjunction with the family leave.

(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: None

(b) Reporting and paperwork requirements: Agencies shall report use of sick leave sharing to department.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative available

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

(6) Any additional information or comments: No

TIERING: Was tiering applied? Yes. The qualifying waiting period for family leave is identical to that provided for by PL 103-3 §101(2)(A)(ii).

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). PL 103-3 requires employees to have 12 weeks of unpaid family leave each year. The United States Department of Labor issued in their regulations on June 4, 1993 (2 CFR Par 825).

2. State compliance standards. The purpose of this amendment 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 recognizes 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.

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board for Specialists in Hearing Instruments

201 KAR 7:025. Trial period for remade, remanufactured, or substituted hearing instruments.

RELATES TO: KRS 334.210

STATUTORY AUTHORITY: KRS 334.150

NECESSITY AND FUNCTION: KRS 334.210 provides the buyer of a hearing instrument the right to cancel the purchase within thirty (30) days of the date of purchase. This regulation extends that right to hearing instruments which are substantially altered or substituted for the original instrument during the first thirty (30) day period.

Section 1. If, for any reason, a hearing instrument is remade, remanufactured, or substituted during the thirty (30) day trial period required by KRS 334.210, the required thirty (30) day trial period shall begin again on the date of delivery of the new or adjusted hearing instrument.

STEVE BARLOW, Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 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: 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 licensed specialists in hearing instruments.

(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: Clarifies the status of a remade hearing instrument.

(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.

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board for
Specialists in Hearing Instruments

201 KAR 7:105. Hearing procedures.

RELATES TO: KRS 334.050, 334.120

STATUTORY AUTHORITY: KRS 334.120, 334.150

NECESSITY AND FUNCTION: KRS 334.120 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 334 or the regulations promulgated thereunder. This regulation establishes detailed procedures for the conduct of administrative hearings held pursuant to KRS 334.120.

Section 1. Composition of the Board for Purposes of a Hearing. (1) Disciplinary actions or appeals may be heard by a quorum of the board members eligible to hear that particular case, the board's designated hearing officer, or both.

(2) The board may appoint a hearing officer to preside over the hearing, conduct all prehearing activities, prepare findings of fact and conclusions of law at the direction of the board, and provide legal advice to the board.

(3) A board member who has participated in the investigation of a disciplinary action or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit as a member of the board hearing that particular action and shall not be considered an eligible member for purposes of determining a quorum.

(3) Staff members of the board, legal counsel for the board and a court stenographer may also be present for the hearing.

Section 2. Rights of the Respondent. (1) The respondent shall be the licensee, apprentice permit holder, or applicant.

(2) The respondent shall have the right to:

(a) Be present and to be heard at the hearing;

(b) Be represented by legal counsel;

(c) Present evidence;

(d) Cross-examine witnesses presented by the board;

(e) Make both opening and closing statements; and

(f) Have subpoenas issued in accordance with KRS 334.150(14).

Section 3. Prehearing Disclosure of Evidence. (1) By the board.

(a) The names, addresses, and phone numbers of witnesses expected to be called by the board shall be made available upon request of the respondent.

(b) Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefore, except documents protected from disclosure by state or federal law.

(c) Nothing in this section shall be construed as giving the respondent the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board.

(d) The respondent shall also be permitted to examine any items of tangible evidence in the possession of the board.

(2) By the respondent.

(a) At least ten (10) days prior to the scheduled hearing date the respondent shall furnish to the investigator or legal counsel for the board copies of any documents which the respondent intends to introduce at the hearing, and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the board by the respondent.

(b) The respondent shall also produce for inspection any items of tangible evidence within his possession or control which he intends to introduce at the hearing.

(3) Sanctions for failure to comply with prehearing disclosure. Should a party fail to comply with this section the board hearing the disciplinary action may refuse to allow into evidence any items or testimony that have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make an order as it deems appropriate.

(4) Continuing duty to disclose.

(a) After disclosure has been completed, each party shall remain under an obligation to disclose any new or additional items of evidence which the party intends to introduce or witnesses the party intends to have testify.

(b) Additional disclosure shall take place as soon as practicable.

(c) Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 4. Order of Proceeding. (1) Call to order.

(a) The hearing officer shall call the hearing to order.

(b) The hearing officer shall identify the parties to the action and the persons present.

(c) The hearing officer shall read the letter of notice and charges.

(d) The hearing officer shall then ask the parties to state any objections or motions.

(e) The hearing officer shall rule upon any objections or motions, subject to being overridden by a majority vote of the members of the board.

(f) Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive opening statement.

(2) The taking of proof on behalf of the board.

(a) The taking of proof shall commence with the calling of witnesses on behalf of the board.

(b) Each witness shall be examined first by the attorney for the board, then by the respondent or that person's attorney, and finally by members of the board.

(c) Rebuttal examination of witnesses shall proceed in the same order.

(d) Documents or other items may be introduced into evidence as appropriate.

(3) The taking of proof on behalf of the respondent.

(a) Upon conclusion of the case for the board, the respondent shall call its witnesses. These witnesses shall be examined first by the respondent or that person's attorney, then by the attorney for the board, and finally by the members of the board.

(b) Rebuttal examination of those witnesses shall proceed in the same order.

(c) Documents or other evidence may be introduced as appropriate.

(4) Closing statements. At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening

and closing statements.

(5) Decorum. The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 5. Rules of Evidence. (1) The board shall not be bound by the technical rules of evidence.

(2) The board may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law.

(3) Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the board is satisfied of its genuineness and accuracy.

(4) Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(5) The board shall retain the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious.

(6) Rulings on objections to evidence shall be made by the hearing officer but may be overridden by a majority vote of the eligible members of the board.

Section 6. Decisions by the Board. (1) Upon the conclusion of the hearing, the board shall retire into closed session for the purpose of deliberations.

(2) At the conclusion of the board's deliberations it shall propose a motion based upon the evidence presented.

(3) The hearing officer shall draft a proposed order including findings of fact and conclusions of law consistent with the board's deliberations as well as a recommended order to be submitted to the full board at a subsequent meeting.

Section 7. Final Approval by the Board. The board, at its next meeting, or as soon thereafter as may be arranged, shall review the proposed order and consider it for final approval.

Section 8. Continuances; Proceedings in Absentia. (1) It is the policy of the board not to postpone cases which have been scheduled for hearing without good cause.

(2) A request by a respondent for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause.

(3) The decision whether to grant a continuance shall be made by the hearing officer or chairman of the board.

(4) The burden shall be on the respondent to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

STEVE BARLOW, Chairman

APPROVED BY AGENCY: November 12, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 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: 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 licensed specialists in hearing instruments.

(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: Sets forth the hearing procedures.

(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.

GENERAL GOVERNMENT CABINET
Kentucky State Board of Podiatry

201 KAR 25:080. HIV/HBV infection control for podiatrists.

RELATES TO: KRS 311.410(4)

STATUTORY AUTHORITY: KRS 311.410(4)

NECESSITY AND FUNCTION: KRS 311.410(4) empowers the Kentucky State Board of Podiatry to promulgate administrative regulations as necessary to implement and enforce the provisions of KRS 311.390 to 311.510. The purpose of this administrative regulation is to encourage and promote infection control among all Kentucky podiatrists.

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 U.S. Centers for Disease Control Morbidity and Mortality Weekly Report, June 24, 1988, Volume 37, Number 24, 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 podiatrist 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 State Board of Podiatry.

Section 3. Review and Monitoring of HIV or HBV Positive Podiatrists. (1) The Kentucky State Board of Podiatry may convene a review panel to:

(a) Monitor the adherence of a HIV or HBV positive podiatrist 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 podiatrist.

(2) The review panel shall include the:

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

(b) A clinical infectious disease specialist; and

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

(3) The Kentucky State Board of Podiatry may appoint to the review panel professionals in addition to those specified in subsection (2) of this section.

Section 4. Disciplinary Action. Any podiatrist who does not comply with the requirements of this administrative regulation or the limitations and restrictions established by the review panel, pursuant to administrative regulation, shall be subject to disciplinary action by the Kentucky State Board of Podiatry as set forth in KRS 311.480.

Section 5. Confidentiality. Information obtained by the Kentucky State Board of Podiatry pursuant to this administrative 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.

JOSEPH P. LEONE, President

APPROVED BY AGENCY: October 28, 1993

FILED WITH LRC: November 4, 1993 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 21st day of December, 1993, at 9 a.m. in Room 113, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of December, 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: Bill Pettus, Assistant Attorney General, Office of the Attorney General, Capitol Building, Frankfort, Kentucky, 40601, (502) 564-7600.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bill Pettus

(1) Type and number of entities affected: Approximately 80 - 90 podiatrists licensed in Kentucky.

(a) Direct and indirect costs or savings to those affected: The administrative regulation does not add or delete any costs.

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: Affected podiatrists who perform exposure-prone procedures may report their status to the board.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The administrative 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 administrative regulation does not add additional reporting requirements.

(3) Assessment of the anticipated effect on state and local revenues: There will be some cost to the board.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The method used was felt to be the one which would allow implementation and remain consistent with federal law.

(5) Identify any state or federal statute or regulation that may conflict with, overlap, or duplicate the administrative regulation being promulgated: There is no such statute or administrative regulation.

(6) Any additional information or comments: None

TIERING? Was Tiering applied? No. Explain: Serostatus disclosure requirements pertain to all licensees of the board. There is no reason to impose varying requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC Section 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 podiatrists shall adhere to universal precautions. A podiatrist who is HIV or HBV seropositive and performs exposure-prone invasive procedures may seek counsel from the Kentucky State Board of Podiatry. Upon request the board is empowered to convene an expert review panel to advise the podiatrist. If the podiatrist does not comply with the panel's recommendations and poses a significant risk to patients, the panel may initiate the complaint procedure.

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 the transmission of HIV and HBV to patients during exposure-prone invasive procedures. Those guidelines require the following: (1) use of universal precautions; (2) adherence to guidelines for disinfection and sterilization; of reusable devices used in invasive procedures; (3) exposure-prone procedures should be identified; (4) health care workers who perform exposure-prone procedures; should know their HIV and HBV status; (5) 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 U.S. Centers for Disease Control Morbidity and Mortality Weekly Report, June 24, 1988, Volume 37, Number 24.

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 the stricter standard, or additional or different responsibilities or requirements. N/A

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 7:200. Disposal of coal combustion fly ash, bottom ash and scrubber sludge under special waste permit-by-rule at 401 KAR 45:060, Section 1(6).

RELATES TO: KRS 224.50-760, Chapter 350, 30 CFR 730-733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 CFR 730-733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This administrative regulation provides for the disposal of limited quantities of coal combustion waste consisting of fly ash, bottom ash and scrubber sludge in accordance with 401 KAR 45:060 Section 1(6).

Section 1. Applicability. (1) This administrative regulation shall not apply to disposal of waste for which a special waste formal permit is required under 401 KAR 45:030 or a special waste registered permit-by-rule is required under 401 KAR 45:070, from the cabinet's Department for Environmental Protection, Division of Waste Management.

(2) This administrative regulation shall apply only to disposal of coal combustion waste consisting of fly ash, bottom ash and scrubber sludge, that is eligible for the special waste permit-by-rule under 401 KAR 45:060, Section 1(6).

(a) This administrative regulation shall apply to disposal of waste from flue gas desulfurization and waste from fluidized bed combustion.

(b) This administrative regulation shall apply to disposal of waste from burning oil or gas with coal, if the oil or gas is used only for startup or flame stabilization.

(c) This administrative regulation shall not apply to disposal of boiler slag from boiler cleaning operations.

(d) This administrative regulation shall not apply to disposal of coal combustion waste that has been mixed or otherwise comanaged with low volume waste or with materials that exhibit hazardous waste characteristics. Coal combustion waste generated prior to the effective date of this administrative regulation shall be presumed to have been mixed or otherwise comanaged with low volume waste or with materials that exhibit hazardous waste characteristics, unless the applicant has rebutted this presumption to the satisfaction of the cabinet.

(3) This administrative regulation shall not apply to coal combustion waste transfer facilities and temporary storage areas that are located outside the permit area of a surface coal mining and reclamation operation.

Section 2. General Provisions. (1) The requirements of this administrative regulation shall apply in addition to all other requirements of 405 KAR Chapters 7 through 24.

(2) The cabinet shall approve disposal of coal combustion waste under this administrative regulation only if it determines that the proposed disposal can reasonably be conducted in accordance with KRS Chapters 224 and 350; 401 KAR 30:031, 45:060, Section 1(6), and 45:160; and 405 KAR Chapters 7 through 24.

(3) The Department for Surface Mining Reclamation and Enforcement shall notify the Department for Environmental Protection, Division of Waste Management of each application and permit for disposal of coal combustion waste under this administrative regulation, and shall maintain a list of the issued permits.

(4) Approval for disposal of coal combustion waste under this administrative regulation shall be valid only for waste of the specific generating facility, components, chemical characteristics, and amount, that are identified in the application or expressly stated as conditions of the issued permit.

(5) An application to modify an existing permit to initially include disposal of coal combustion waste, to increase the amount of waste to be received, to change the components of the waste, or to change the generating facility, shall be an application for a major revision under 405 KAR 8:010, Section 20(2), or an amendment under 405 KAR 8:010, Section 23.

(6) The permittee shall keep accurate records, which shall be made available to the cabinet upon request, showing the source and amount of each shipment of coal combustion waste that is received.

(7) Prior to disposal of the waste, any material that is not the coal combustion waste approved for disposal shall be removed from the waste. A record shall be kept of the removed material and its disposition, and this record shall be available at the mine site for examination by the cabinet.

(8) Coal combustion waste shall be disposed of only in the pit or extraction area from which coal has been removed by surface mining activities, and the waste disposal shall not delay contemporaneous reclamation. Disposal of coal combustion waste shall not be a basis for approval under 405 KAR 16:020, Section 2, of time and distance limits less restrictive than those specifically set forth in 405 KAR 16:020, and shall not be a basis for approval of a deferment under 405 KAR 16:020, Section 4.

(9) The volume of coal combustion waste placed at any location shall not exceed the in-place volume of the marketable coal seams removed from that location.

(10) The permittee shall prepare accurate maps, which shall be made available to the cabinet upon request, showing each location where coal combustion waste has been placed and the volume of waste placed at that location. Phase I bond release shall not be granted for an area containing coal combustion waste unless the permittee has submitted to the cabinet accurate maps showing the locations and volumes of the waste.

(11) If requested by the cabinet at any time, or if required by the issued permit, the applicant or permittee shall provide representative samples of the coal combustion waste to the cabinet in a manner satisfactory to the cabinet. If the waste has been covered in accordance with Section 6(1)(e) of this administrative regulation prior to the cabinet's request for samples, the request shall be authorized by the appropriate regional administrator of the Division of Field Services in the Department for Surface Mining Reclamation and Enforcement, or a person of higher authority.

(12) Annually, and additionally if required by the issued permit or if requested by the cabinet at any time, the permittee shall obtain a laboratory analysis to characterize the coal combustion waste in the manner required in Section 4(3) of this administrative regulation or to characterize the waste for other contaminants or by other methods that the cabinet may deem necessary, and shall submit the results to the cabinet. If the waste has been covered in accordance with Section 6(1)(e) of this administrative regulation prior to the cabinet's request for laboratory analysis, the request shall be authorized by the appropriate regional administrator of the Division of Field Services in the Department for Surface Mining Reclamation and Enforcement, or a person of higher authority.

Section 3. Public Notice. The newspaper advertisements required under 405 KAR 8:010, Section 8, shall also state:

(1) That the applicant proposes to dispose of coal combustion waste in the permit area and shall identify each of the component materials - fly ash, bottom ash, or scrubber sludge - that the waste will contain;

(2) The location, business name, and mailing address of the facility that will generate the waste;

(3) The approximate volume in cubic yards, and the approximate

tonnage, of waste that will be received from the generating facility annually and for the term of the permit; and

(4) The method by which the waste will be transported from the generating facility to the mine site.

Section 4. Content of Permit Application. (1) The application shall include the written consent of the surface owner for the disposal of coal combustion waste on his property in the permit area.

(2) The application shall state:

(a) The location, business name, mailing address, and telephone number of the facility that will generate the coal combustion waste, and the name and title of the responsible official of the generating facility who may be contacted regarding the waste;

(b) Each of the component materials - fly ash, bottom ash, or scrubber sludge - that the waste will contain;

(c) The approximate volume in cubic yards, and the approximate tonnage, of waste that will be received from the generating facility annually and for the term of the permit; and

(d) The method by which the waste will be transported from the generating facility to the mine site.

(3) The application shall include the results of representative sampling and laboratory analysis of each component - fly ash, bottom ash, or scrubber sludge - of the waste for the contaminants listed in 401 KAR 31:030, Section 5(3). The representative sampling and laboratory analysis shall be in accordance with 401 KAR Chapter 31. As measured under 401 KAR 31:030, Section 5(1), each component of the waste shall not contain any contaminant listed in 401 KAR 31:030, Section 5(3), at a concentration that equals or exceeds the regulatory level set forth in 401 KAR 31:030, Section 5(3).

(4) The application shall include a detailed narrative description of all aspects of the proposed methods of waste handling and disposal in the permit area, including methods of record keeping, transfer, temporary storage, transport, and placement.

(5) If the applicant proposes to dispose of coal combustion waste at a contour mining area the application shall demonstrate that the waste will not adversely affect the physical stability of the backfilled slope area.

(6) The application shall include appropriate maps, drawings and cross-sections of all areas and facilities to be used in the permit area for waste handling and disposal, including transfer, temporary storage, transport, and placement.

(7) The application shall include a detailed narrative description, appropriate maps, drawings, cross-sections, and design calculations, of all measures to be taken to minimize waste becoming airborne and to minimize entry of waste and contaminants into surface and groundwater.

(8) Baseline characterization of quality of groundwater and surface water.

(a) The application shall include baseline data to characterize the quality of groundwater and surface water in areas that may be affected by disposal of coal combustion waste.

(b) The baseline data shall be collected and analyzed in accordance with 401 KAR 45:160 and this subsection. To the extent practicable, and to minimize duplication, the cabinet may allow the collection of data under this subsection to be coordinated with the collection of data required under 405 KAR 8:030, Sections 14 and 15.

(c) The characterization of groundwater shall include the parameters in 401 KAR 45:160, Section 7(2), except pursuant to 401 KAR 45:160, Section 7(3), the cabinet may require different parameters for an application based upon the demonstrated characteristics of the waste.

(d) The characterization of surface water shall include the parameters in 401 KAR 45:160, Section 7(2), except the cabinet may require different parameters for an application based upon the demonstrated characteristics of the waste.

(9) Plan for monitoring and reporting quality of groundwater and surface water.

(a) The application shall include a plan for the monitoring and reporting, until final bond release on the permit area, of the quality of groundwater and surface water in areas that may be affected by disposal of coal combustion waste, and shall provide for monitoring capable of detecting if contaminants from the waste are entering groundwater and surface water.

(b) The plan shall provide for monitoring and reporting of water quality in accordance with 401 KAR 45:160 and Section 7 of this administrative regulation. To the extent practicable, and to minimize duplication, the plan may provide for monitoring and reporting that is coordinated with the monitoring and reporting required under 405 KAR 8:030, Section 32, and 405 KAR 16:110.

(10) The determination of probable hydrologic consequences required under 405 KAR 8:030, Section 32(3), shall take into account the disposal of coal combustion waste.

Section 5. Performance Bond. The performance bond required under 405 KAR Chapter 10 shall cover, and shall expressly state that it covers, disposal of coal combustion waste on the permit area.

Section 6. Environmental Protection Performance Standards. (1) This subsection shall apply to disposal of all coal combustion waste.

(a) The permittee and operator shall comply with 401 KAR 30:031 and 45:160.

(b) Waste transfer facilities and temporary storage areas in the permit area shall be located, operated and maintained to minimize waste becoming airborne and to minimize entry of waste and contaminants into surface and groundwater.

(c) To the extent practicable, areas to receive waste shall be selected to minimize water contact with the waste.

(d) The waste shall be handled and transported in the method approved in the permit, and shall be placed in its final location in a controlled manner.

(e) After the waste is placed in the pit or coal extraction area, it shall be covered as contemporaneously as practicable with at least four (4) feet of nonacid forming spoil material.

(2) This subsection shall apply in addition to subsection (1) of this section if the concentration of any contaminant in the coal combustion waste exceeds the maximum contaminant level set forth in 401 KAR 30:031, Section 5(1).

(a) The waste shall be placed at least four (4) feet above the seasonal high water table that is projected to be established after completion of mining and reclamation.

(b) The waste shall not be placed within eight (8) feet horizontally of a final highwall, exposed coal seam or coal outcrop.

(c) Before the waste is placed, the pit or coal extraction area shall be backfilled with nonacid forming spoil material to at least four (4) feet above the lowest coal seam.

(d) The waste shall not be pushed or dumped down a slope.

(e) The waste shall be placed in the pit or coal extraction area in one (1) approximately horizontal layer whose thickness at any point shall not exceed the average cumulative thickness of the marketable coal seams to be extracted from the permit area; except that occasional minor exceedences of this average cumulative thickness shall be allowed if the cabinet finds there is substantial compliance with the thickness requirement.

Section 7. Monitoring and Reporting Quality of Surface and Groundwater. (1) The permittee shall monitor and report the quality of surface and groundwater quarterly, until final bond release on the permit area. The monitoring and reporting shall comply with the approved plan required under Section 4 of this administrative regulation, and shall be in accordance with 401 KAR 45:160 and this section.

(2) The monitoring and reporting of groundwater quality shall include the parameters used in the baseline characterization of groundwater under Section 4 of this administrative regulation, except

the cabinet may require different parameters under 401 KAR 45:160, Section 8(3), for a permit based upon the demonstrated characteristics of the waste.

(3) The monitoring and reporting of surface water quality shall include the parameters in 401 KAR 45:160, Section 7(2), except the cabinet may require different parameters for a permit based upon the demonstrated characteristics of the waste.

Section 8. Enforcement. Pursuant to procedures in 405 KAR Chapter 12, the cabinet shall require the cessation of waste disposal that is not in substantial compliance with this administrative regulation or the permit requirements and may require appropriate remedial and protective measures, which may include but shall not be limited to additional monitoring of quality of surface and groundwater, excavation and redisposal of the waste on the permit area, and excavation and removal of the waste from the permit area.

Section 9. Application for Advisory Review. The purpose of this section is to assist persons who intend to submit a complete and accurate application under this administrative regulation and wish to begin the review process, but because of incomplete contract negotiations or other good cause are unable to identify the generating facility and the actual amount, components and characteristics of the coal combustion waste to be disposed of.

(1) The cabinet may accept, for advisory review only, an application that meets all requirements of this administrative regulation except for identification of the generating facility and the amount, components and characteristics of the actual waste.

(2) The application for advisory review shall be subject to the same requirements and procedures as complete applications under this administrative regulation, except:

(a) The public notice under Section 3 of this administrative regulation and the application under Section 4 of this administrative regulation shall state that because the identification of the generating facility and the amount, components and characteristics of the actual waste are not specified, the application is being submitted for advisory review only, and that no final determination of the cabinet shall be made on the application.

(b) The application shall state the assumed components of the waste and the assumed characteristics of the waste. The assumed characteristics of the waste shall include an assumed value, or an assumed range of values, for each of the contaminants listed in 401 KAR 31:030, Section 5(3).

(c) The cabinet shall review the application based upon the assumed components and characteristics of the waste. During and at the conclusion of its review the cabinet shall notify the applicant in writing of the results of the review. The application for advisory review shall be deemed permanently withdrawn at the conclusion of the cabinet's review. The cabinet shall not take any further action on the application and shall not make a final determination regarding any aspect of the application.

(d) The cabinet shall not withhold, deny, issue, amend or revise a permit based on the application for advisory review.

(3) The cabinet's advisory review under this section shall have no legal bearing upon a subsequent determination of the cabinet based upon a complete application under this administrative regulation.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: November 15, 1993

FILED WITH LRC: November 15, 1993 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation has been scheduled for 9 a.m. (EST) Wednesday, December 29, 1993 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by December 24, 1993. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by December 24, 1993, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this administrative regulation but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on December 29, 1993. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jim Villines

(1) Type and number of entities affected: At present, coal combustion waste may be disposed of on the permit area of a surface coal mining and reclamation operation if the permittee obtains a special waste formal permit from the Division of Waste Management under 401 KAR 45:030 and obtains approval from the Department for Surface Mining Reclamation and Enforcement through appropriate modifications to the surface mining permit. In 1992 the cabinet adopted 401 KAR 45:060, establishing a permit-by-rule under which certain special waste sites or facilities are deemed to have a permit from the Division of Waste Management without having applied or registered, provided the operation is a practice common to the industry, is not in violation of 401 KAR 30:031, and does not present a threat or potential threat to human health or the environment. Section 1(6) authorizes disposal of coal combustion waste in an active mining operation if the operation has a mining permit issued under KRS Chapter 350 that includes disposal of special waste and complies with the conditions of the mining permit. This proposed administrative regulation follows up the permit-by-rule by providing permitting and environmental protection requirements under which limited amounts of coal combustion waste can be disposed of in an environmentally sound manner that does not interfere with normal surface mining and reclamation activities. A person who desires to dispose of coal combustion waste at a coal mining operation in a manner not authorized in this proposed administrative regulation must apply for a special waste formal permit from the Division of Waste Management under 401 KAR 45:030. This administrative regulation directly affects only those permittees that voluntarily choose to be affected by it. Since a mining and reclamation operation does not itself generate coal combustion waste, a permittee's decision to import coal combustion waste to the permit area for disposal is a business decision based upon coal marketing or other considerations, and is not a result of regulatory requirements applicable to the mining operation. The proposed administrative regulation applies only to disposal on operations extracting coal by surface methods (area, mountaintop removal, contour). There are approximately 2300 active mining operations, about half of which extract coal by surface methods. Fewer than ten operations dispose of coal combustion waste on the permit area under current requirements. The cabinet expects the number of sites receiving coal combustion waste to increase after this regulation is adopted. This administrative regulation potentially affects residents of the coal producing regions of Kentucky through possible environmental impacts associated with disposal of coal combustion waste.

(a) Direct and indirect costs or savings to those affected:

1. First year: Initial costs to applicants under this administrative regulation are case specific. They include engineering costs to prepare the waste disposal plans and other materials for inclusion in the permit application; costs associated with laboratory analysis to characterize the potential of the waste to leach certain contaminants (however, such characterizations are commonly obtained by the waste generating facility and may already be available to the applicant); costs for installing wells for monitoring groundwater (the number, location and depth of wells will depend on site characteristics); and costs of water sampling and analysis for background characterization of groundwater and surface water quality. Some comparable costs would be incurred if the applicant chose to apply for a separate permit from the Division of Waste Management instead of applying under this administrative regulation.

2. Continuing costs or savings: Continuing costs to permittees under this administrative regulation are case specific. They include costs associated with laboratory analysis at least annually to characterize the potential of the waste to leach certain contaminants (however, such characterizations are commonly obtained by the waste generating facility and may already be available to the applicant); costs for preparing maps of locations and amounts of waste disposal; and costs of collecting and analyzing (parameters to be analyzed may depend upon the characteristics of the waste) water samples for monitoring of groundwater and surface water quality. Some comparable costs would be incurred if the applicant had obtained a separate permit from the Division of Waste Management instead of a permit under this administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that are anticipated to increase or decrease costs, and no anticipated effects upon competition.

(b) Reporting and paperwork requirements: This administrative regulation requires permittees to keep accurate records showing the source and amount of coal combustion waste that is received, and make them available to the cabinet upon request. It requires the permittee to prepare maps showing locations where waste is placed and the volume placed at each location, and to submit them to the cabinet. It requires permittees to monitor and report the quality of groundwater and surface water. It requires permittees at least annually to obtain and submit to the cabinet a laboratory analysis characterizing the potential of the waste to leach certain contaminants.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department for Surface Mining Reclamation and Enforcement will experience some increase in operational costs in permitting and enforcement activities due to coal combustion waste disposal at surface coal mining and reclamation operations. Since the waste disposal will be incorporated into existing permitting and enforcement procedures, the additional costs are expected to be relatively small. Also, these costs depend upon the actual number of mining operations that choose to apply under this administrative regulation. Assuming that an applicant under this administrative regulation would otherwise have applied separately to the Division of Waste Management, an application under this administrative regulation thus represents some savings to the Division of Waste Management in the form of demands not made upon its resources. However, there will be technical consultation between these agencies on some applications and operations under this administrative regulation, so that Division faces continued resource demands under this administrative regulation.

2. Continuing costs or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None are anticipated.

(b) Reporting and paperwork requirements: This administrative regulation requires the Department for Surface Mining Reclamation and Enforcement to maintain a list of applications and permits issued under this administrative regulation, and to provide the list to the Division of Waste Management, for general coordination purposes. There are no other new reporting and paperwork requirements.

(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: While there were modifications to various provisions of this administrative regulation during its development, no significant alternative methods were considered.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: Certain administrative regulations in 401 KAR Chapters 30, 31 and 45 are applicable to coal combustion waste disposal under this administrative regulation, and these are identified and made requirements in this administrative regulation. These include 401 KAR 30:031, 31:030, Section 5, 45:060, and 45:160.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(6) Any additional information or comments: None.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7 through 24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255; 30 CFR Parts 730-733, 735, 917.

2. State compliance standards. This administrative regulation offers surface coal mining permittees the option to dispose of coal combustion waste on the permit area under the special waste permit-by-rule established at 401 KAR 45:060, Section 1(6). Applicants who obtain a permit from the cabinet's Department for Surface Mining Reclamation and Enforcement under this administrative regulation are deemed to have received a permit from the cabinet's Department for Environmental Protection, Division of Waste Management, without having applied separately to the Division of Waste Management. A person who wishes to dispose of coal combustion waste on a surface mining permit area in a manner that is not authorized in this administrative regulation may, as at present, apply separately to the Division of Waste Management for a special waste formal permit under 401 KAR 45:030. Among other requirements, this administrative regulation requires that disposal of coal combustion waste be approved in the surface mining permit; limits the waste to those coal combustion wastes authorized under 401 KAR 45:060, Section 1(6); requires identification of the generating facility; requires laboratory analysis to characterize the waste to show its potential to leach certain contaminants; restricts disposal to coal extraction areas of surface mines; limits waste volume at a location to the volume of coal extracted at that location; requires the permittee to keep records of the source and amount of shipments of waste received, and maps of disposal locations and amounts; requires public notice of the intent to dispose of waste; requires written consent of the surface owner for disposal of waste on his property; requires a detailed plan for waste disposal; requires background characterization of groundwater and surface water; requires the permittee's surface mining performance bond to be specifically applicable to waste disposal; requires compliance with certain environmental protection performance standards, including placement criteria that depend upon the leaching characteristics of the waste; and requires monitoring and reporting of quality of groundwater and surface water.

3. Minimum or uniform standards contained in the federal mandate. There are no corresponding standards in the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable, since there are no corresponding requirements in the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable, since there are no corresponding requirements in the federal mandate.

EDUCATION, ARTS, AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 4:160. Capital construction process.

RELATES TO: KRS 156.160, 157.420, 162.060, 162.065, 162.070, 322.360

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.420, 162.060, 162.065

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education (SBESE) to prescribe administrative regulations relating to construction of public school buildings and the use of uniform forms. KRS 157.420 requires each school district's capital outlay to be utilized in accordance with the district's facility plan. KRS 162.060 requires approval of all school building plans and specifications by the chief state school officer. KRS 162.065 requires the SBESE to prescribe administrative regulations governing construction managers. KRS 162.070 requires school construction contracts to be awarded to the lowest and best responsible bidder. KRS 322.360 requires a school district, when engaged in the construction of any public work involving engineering, to utilize an architect to directly supervise the preparation of plans and specifications, estimates, and the execution of construction. 702 KAR 4:010, 702 KAR 4:020, 702 KAR 4:030, and 702 KAR 4:040 are no longer required because they are being replaced by 702 KAR 4:160. This administrative regulation prescribes the procedures and criteria for the construction of public school buildings.

Section 1. Definitions. (1) "AIA" means the American Institute of Architects.

(2) "Architect" means any design professional licensed in the Commonwealth of Kentucky under KRS Chapters 322, 323, or 323A, which includes architects, engineers, and landscape architects.

(3) "Board" means the local board of education.

(4) "Construction manager" or "CM" means a qualified and experienced contracting organization which provides the services of construction management and possesses a general trades workforce, staff and equipment, financial base, insurance coverage, bonding capability, a minimum of three (3) years' construction management experience on projects of $1,000,000 or more, and the ability to provide the services required.

(5) "Division" means the Division of Facilities Management, Kentucky Department of Education (KDE).

(6) "Emergency" means the loss of use of physical facilities resulting from an unforeseen occurrence which requires prompt action.

(7) "Fixed equipment" means furnishings or equipment which are secured to the wall, floor, or ceiling to operate or function in the manner intended by the product manufacturer. Examples of fixed equipment are bleachers, student lockers, casework with sinks, and plumbing fixtures.

(8) "KERA" means Kentucky Education Reform Act.

(9) "Moveable equipment" means any furnishings or equipment not considered fixed equipment.

(10) "Owner" means the local board of education or financing corporation established for the purpose of financing school construction.

(11) "Superintendent" means the superintendent of the local school district or the employee the superintendent has selected to represent the board regarding construction issues.

Section 2. Construction Project Application. (1) The board shall submit an application on form BG #1 to the division for approval of a proposed construction project.

(2) An application shall be submitted for any project:

(a) Funded by Support Education Excellence in Kentucky (SEEK) capital outlay, special voted building tax funds, Facility Support Program of Kentucky (FSPK) funds as provided by KRS 157.620, School Facilities Construction Commission (SFCC) funds, or building funds as provided by KRS 160.476; or

(b) Proposing construction of a new building, addition, or alteration of an existing building which requires design by an architect for a building or building system.

(3) To initiate a project which is listed in its facility plan or a minor project permitted in subsection (9) of this section, a vote by the board approving the project shall be required.

(4) If SFCC funds multiple categories, then KERA strand priorities shall be considered equivalent to the next category of need listed on the district facility plan. If no SFCC funding is included in the financing plan, the board may select any project on its facility plan without regard to categorical priority number.

(5) If a project exceeds $250,000, the superintendent shall submit the BG #1 in person to the division, and shall discuss the project scope and financing plan.

(6) The BG #1 shall be accompanied by:

(a) A copy of the board's action, either by official board minutes or an unofficial excerpt signed by the board secretary verifying authenticity, approving the application; and

(b) A narrative justification of the construction project selection, including its priority over other projects relative to district goals and maximization of funding and benefits to students.

(7) Within sixty (60) days of receiving the completed application documents, the BG #1 shall be approved by the division, if justified pursuant to the following criteria:

(a) Proposed project is on the facility plan or conforms to minor project criteria in subsection (9) of this section;

(b) SFCC funding does not exceed the SFCC maximum budget established for the project;

(c) Application has original signatures;

(d) A board order; and

(e) The narrative justification.

(8) The Division of Finance, KDE, may give tentative approval based on a review of the board's ability to support the financing plan for the proposed construction budget.

(9) The board may submit a BG #1 for minor projects not listed in the facility plan if the project meets the following criteria:

(a) Expansion of a permanent center or functional center to include a maximum of four (4) classrooms when documentation to support the request is provided for either student population growth or curriculum changes;

(b) Campus enlargement, minor renovation of buildings and building systems, or construction of an additional support space at permanent or functional centers when its need can be documented and justified; or

(c) Projects to comply with statutes and administrative regulations of other agencies having jurisdiction.

(10) If no action is taken by the board within one (1) year from the date of the BG #1 approval, the approval shall be no longer effective.

(11) If the division considers the architect, CM, or board to be nonresponsive or causing undue delays in the design schedule, it may request the chief state school officer to revoke the BG #1 approval.

(12) If an emergency requiring the submission of a BG #1 occurs:

(a) The emergency shall be declared in accordance with KRS 424.260 or 45A.380, whichever is applicable; and

(b) The board shall:

1. Notify the division and request approval to proceed with the plans and corrective action;

2. Submit to the division:

a. BG #1;

b. Copy of board order declaring the emergency; and

c. Copy of the written determination as required by KRS 45A.380 for those districts which have adopted the Model Procurement Code.

Section 3. Local Board Oversight Responsibilities. (1) All construction files and records of:

(a) Board actions;

(b) Proposals;

(c) Contracts;

(d) Correspondence; and

(e) Financial documents shall be maintained by the superintendent in the central office, organized and accessible for review.

(2) If the architect or CM indicates additional funding is necessary or a reduction of physical scope of the project is needed, the board shall approve a board action and forward it to the division.

(3) During the planning and bidding phase of the construction project, the board shall:

(a) Review bidding documents for compliance with statutes and administrative regulations, with particular attention to sales and use tax exemption when purchasing materials direct;

(b) Comply with all submission requirements resulting from the completed plans and specification review by the division;

(c) Not advertise before receipt of written approval from the division;

(d) Advertise in the newspaper having the largest circulation in the school district the following number of days prior to the date established to receive bids:

1. $1,000,000 or less project, a minimum of seven (7) days and a maximum of twenty-one (21) days; or

2. A project in excess of $1,000,000, a minimum of twenty-one (21) days;

(e) Hold the bid opening:

1. In a location accessible to the public;

2. Between 10 a.m. and 3 p.m. (local time); and

3. Within Monday through Friday, excluding holidays;

(f) Accept the architect's and CM's evaluation of the bids and approve or reject their recommendations;

(g) Review any bid package which receives only one (1) bid to ensure specifications allowed open competition. The board may approve the contract if the bid does not exceed 110 percent of the bid estimate and is within the budget for the project;

(h) Ensure the CM completes the KDE noncollusion affidavit;

(i) Hold possession of original bidding documents;

(j) Approve and submit the successful bidders' documents to the division for review and approval of the proposed contract(s) and the financial plan; and

(k) Have in its possession prior to executing the construction contract:

1. Contractor's performance and payment bond;

2. Certificate of required insurance;

3. Written approval from the division; and

4. Bids accepted for the bond sale, when applicable.

(4) During the construction administration of the project, the board shall:

(a) Name the superintendent to speak on behalf of the board as owner in the contract documents and set the parameters of that responsibility;

(b) Seek the superintendent's recommendation relative to proposed board actions;

(c) Approve all expenditures from the construction account;

(d) Seek SFCC approval of expenditures as applicable;

(e) At least once per month receive and review written inspection and progress reports provided by the architect;

(f) If the construction project is in excess of $250,000, forward to the division a monthly summary of payments and expenditures from the construction account after approval by the board;

(g) Review the need for changes to the contract;

(h) Assign partial or full responsibility to the proper party if additional costs are due to an oversight or omission;

(i) Monitor the administration of the project by its architect and CM to ensure no prepayment is made for their services;

(j) After notifying the division, hire a professional services firm experienced in architectural, engineering, accounting, or construction management services to provide an audit of the construction project if the board suspects nonfeasance or malfeasance;

(k) Secure all required inspections and close out documents for submittal to the appropriate agencies;

(l) Receive an occupancy permit from the Department of Housing, Buildings and Construction prior to occupying the facility;

(m) Retain a minimum five (5) percent retainage of the construction contract until the division has issued a written approval either to reduce the contract retainage or to make final payment on the contract;

(n) Require the superintendent to participate in the year-end warranty inspection and report results of the inspection to the board;

(o) Contact the contractor's bonding company each month the contractor is more than two (2) weeks behind schedule or is not performing in accordance with the contract; and

(p) Not hire additional architectural services outside the architect's contract without approval from the division.

(5) If federal funds or federal agencies are involved, the board may request approval from the chief state school officer to waive or condense procedures to expedite the construction design process.

(6) If a lien is filed with a court and the board is given notice of the lien, the board shall stop partial payments on the contract and contact the division. Payments may begin after:

(a) The lien has been released;

(b) The division has approved a payment schedule which provides for retaining the lien amount being contested; or

(c) The division has approved a payment schedule after a surety bond has been provided to pay the lien.

Section 4. Architectural Services. (1) The board and architect shall negotiate a contract for services required. The board shall either advertise for architectural services or select a minimum of three (3) architectural firms which shall be evaluated through the request for proposal (RFP) process. Advertisement or RFP evaluation of three (3) firms is not required if the project is estimated at less than $500,000 or is the continuation of phased construction at the same site.

(2) The architectural services shall be negotiated using the following documents:

(a) KDE Architect RFP;

(b) AIA B141, or AIA B141-CMa, with KDE amendments;

(c) KDE noncollusion affidavit; and

(d) KDE architect fee guideline, or SFCC fee maximum.

(3) A letter of agreement stating services, terms, and conditions which has been approved by the board shall be acceptable in lieu of the AIA B141 for projects with an estimated construction cost of less than $25,000.

(4) The division shall review and approve the proposed architect's contract based on the following criteria:

(a) Copy of the board action approving the terms of the proposed contract;

(b) Scope and fee conforms to BG #1; and

(c) Submittal of required forms.

(5) The division shall advise the board of:

(a) Apparent deficiencies in completion of the contract;

(b) Discrepancies related to the scope of work and anticipated cost approved on the BG #1;

(c) Compliance of fee to fee schedule; and

(d) Concerns regarding modifications to the contract.

(6) The architect shall:

(a) Provide on-site visitation and inspection of, and reporting on, the construction of the project to the board;

(b) Certify, to the best of his ability, professional judgment, and with due diligence, that all phases of the project have been completed in conformance with the approved plans and specifications and any authorized changes;

(c) Provide professional liability insurance including errors and omission insurance in the following minimum amounts:

1. Projects less than $1,000,000 require $250,000 insurance with a five (5) percent maximum deductible;

2. Projects from $1,000,000 to $10,000,000 require $500,000 insurance with a maximum five (5) percent deductible; and

3. Projects $10,000,000 or greater require $1,000,000 insurance with a maximum five (5) percent deductible;

(d) Require his consultants to retain professional liability insurance including errors and omission insurance in the minimum amount of $250,000 with a maximum five (5) percent deductible;

(e) Provide copies of certificates of insurance to the division;

(f) Assist in preparing the bid advertisement for the board;

(g) List projects estimated in excess of $1,000,000 with a minimum of two (2) Kentucky construction reporting services;

(h) Submit to the board a written inspection report which includes a status of the project, dates and times architect was on site, conditions of the job, problems, delays, and concerns at least monthly after construction begins;

(i) Request payment of construction administration phase fee at the same proportionate percentage as the construction's completion with ten (10) percent of it being retained by the board until the approval of final payment on construction;

(j) Request approval by the board for any reimbursement or additional service prior to the service being rendered or expenditure being made;

(k) When requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;

(l) Request additional payment for construction time or services which extend beyond the scheduled completion date only if the owner is successful in receiving liquidated damages. Conditions to receive payments shall be:

1. Additional costs were incurred through no fault of the architectural firm and are documented due to the delay of the contractor; and

2. The pro rata share shall be determined by the board as a ratio of validated architect's damages to the total of all documented damages;

(m) Utilize his consultants listed on the contract form for design, construction administration and oversight;

(n) Pay his consultants the same percentage proportion of their fee as he has received from the board;

(o) Pay his consultants eighty (80) percent of the architect's fee based on the construction cost of the consultant's work. If the architect's fee is a lump sum, the consultant shall receive the same proportionate amount;

(p) If a joint venture, list on the contract form, the prime architectural firm accountable to the board and provide the board with a copy of the joint venture contract indicating each party's responsibilities and fees;

(q) Provide independent contract administration over construction contracts awarded to the project's CM; and

(r) Not include in the construction cost calculation change orders to the contract that the board has not requested. Changes to the contract requested by the board that decrease the construction cost shall be calculated at the hourly billing rate schedule or basic fee percentage, whichever is less.

(7) The board shall provide oversight of the architectural services in the following manner:

(a) The architect's contract shall be reviewed and signed by the board's attorney for compliance with the law; and

(b) The board shall submit to the division for approval:

1. The proposed architect contract and completed RFP;

2. A copy of the board order approving the contract;

3. A narrative of the evaluation process; and

4. A copy of the certificate(s) of professional liability insurance.

Section 5. Construction Management Services. (1) A CM shall not be employed on any project estimated at less than $1,000,000 or without the approval of the division if the number of work categories negate the need for full-time, on-site supervision for projects in excess of $1,000,000. The division may approve exceptions as follows:

(a) If the project is a phase of a phased project and the CM is to be employed on all subsequent phases; or

(b) If the project's complexity or fiscal soundness requires it.

(2) In hiring a CM, the board shall either advertise for CM services or select a minimum of three (3) construction management firms which shall be evaluated through the RFP process. Advertisement or RFP evaluation of three (3) firms is not required if the project is the continuation of phased construction at the same site.

(3) The board shall negotiate a contract using the following:

(a) KDE CM RFP;

(b) AIA B801/CMa and KDE amendment;

(c) KDE CM fee guideline or lump sum price;

(d) KDE noncollusion affidavit;

(e) Projected number of months construction;

(f) On-site services fee per month; and

(g) Fee scale for additional construction cost and months.

(4) The number of months in the contract for construction shall not be altered unless:

(a) There is a change in the scope of the work; and

(b) The owner, architect, and CM agree to the revised number of months during the evaluation of construction bids.

(5) The preconstruction phase payment shall be a maximum of ten (10) percent of the total proposed fee.

(6) The CM shall:

(a) Provide a 100 percent performance and payment bond prior to the construction contracts being executed by the board in the amount of the CM fee from an insurance firm authorized to do business in Kentucky and listed in and written within the terms and limits established in 58 Federal Register, p. 35778, 1993;

(b) Provide professional liability insurance with errors and omissions in the following minimum amounts:

1. Projects of $10,000,000 or less, insurance in the amount of $500,000 with a maximum five (5) percent deductible; or

2. For projects in excess of $10,000,000, insurance in the amount of $1,000,000 with a maximum five (5) percent deductible;

(c) Develop bid packaging to ensure at least five (5) known potential bidders are notified on each bid package;

(d) Not transport any bidder's proposal to the bid opening;

(e) Complete a KDE noncollusion affidavit relative to both the superintendent and local board members and the apparent low bidders;

(f) Request approval by the board for any reimbursement or additional service fee prior to the service being rendered or expenditure being made;

(g) When requesting reimbursements or additional service fees, provide a detailed listing of each charge on the payment request;

(h) Request additional payment for construction time or services which extend beyond the scheduled completion date only if the owner is successful in receiving liquidated damages Conditions to receive payments shall be:

1. Additional costs were incurred through no fault of the construc-

tion management firm and are documented due to the delay of the contractor; and

2. The pro rata share shall be determined by the board as a ratio of validated construction manager's damages to the total of all documented damages;

(i) Not include in the construction calculation change orders to the contract that the board has not requested. Changes to the contract requested by the board that decrease the construction cost shall be calculated at the hourly billing rate schedule or basic fee percentage, whichever is less; and

(j) Request payment of the construction phase fee at the same proportionate percentage as the construction's completion with five (5) percent of it being retained by the board until approval of the final payment on construction.

(7) The board shall provide oversight of the CM services in the following manner:

(a) Retain an attorney to:

1. Review the contract as negotiated to ensure compliance with the law;

2. Request modifications to the contract as needed; and

3. Sign the contract form attesting to review;

(b) Take action approving the contract terms and conditions; and

(c) Forward to the division for review and approval:

1. Copy of the RFP and proposed contract;

2. Board order;

3. Narrative of the selection evaluation;

4. Certificate of professional liability insurance; and

5. KDE noncollusion affidavit.

(8) The CM contract shall be reviewed and approved by the division based on the following criteria:

(a) A copy of board order of approval;

(b) Fee based on a lump sum amount or fee guideline;

(c) Modifications to the contract comply with laws; and

(d) Submission of required forms.

Section 6. Plans and Specifications. (1) After approval of the BG #1 application by the division, the division shall provide a procedural checklist to the board that indicates required submissions for the project.

(a) The architect shall prepare schematic plan of the proposed construction from written educational program specifications supplied by the board.

(b) The schematic plans and a copy of the educational program specifications, approved by board action with a copy of the minutes, shall be submitted by the board to the division for review and approval.

(c) The division shall review and approve the schematic plan submittal based on:

1. Site plan: proper siting of the building footprint provides appropriate access, vehicular and pedestrian circulation, separation of bus loading area from other vehicular traffic, utility connections and drainage;

2. Floor plan: number, type, and size of the planned spaces, including support spaces, agree with the programmed spaces listed on the BG #1, the educational specifications, and are in compliance with 702 KAR 1:001, 702 KAR 4:060, and 702 KAR 4:070;

3. Functionality: review of the distribution of functions, or program space and the appropriateness for the needs of the facility;

4. Building efficiency: review of the percent of net program area to gross building area to meet or exceed the guidelines of 702 KAR 1:001;

5. Budget: review of the construction cost (gross area multiplied by the net cost) in relation to the BG #1. If the calculated construction cost exceeds BG #1 cost, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board.

(2) After written approval of the schematic plans is received from the division, the architect shall prepare the design development plans.

(a) The board shall submit to the division for review and approval:

1. Design development plans;

2. Board order approving plans;

3. BG #2; and

4. BG #3.

(b) The division shall review and approve design development plans submittals based on:

1. Site plan: proper siting of the building with respect to vehicular and pedestrian circulation, separation of bus loading area, student play areas, athletic fields, utility construction and site drainage, with details appropriately developed;

2. Floor plan: number, type, and size of the planned spaces consistent with the schematic plan;

3. Enlarged plans and details: appropriate to describe the design intention;

4. Building efficiency: the percent of net program area to gross building area meets or exceeds the guidelines of 702 KAR 1:001;

5. Budget: the probable construction cost, BG #3, is within the approved BG #1 budget. If the probable construction cost exceeds the BG #1 budget, an increase in the budget or a decrease in the physical scope of the project shall be approved by the board;

6. BG #2 form is properly completed and conforms to the educational program specifications; and

7. Design development plans incorporate all previous schematic design review comments.

(3) After written approval of design development plans is received from the division, the completed plans and specifications and project manual shall be prepared by the architect and CM for bidding.

(a) The board shall submit to the division for review and approval:

1. Completed plans and specifications and project manual, if applicable;

2. Board order approving plans and specifications;

3. Revised BG #3; and

4. Proof of submission of completed plans to other agencies having jurisdiction.

(b) The division shall review and approve the completed plans and specifications and project manual submittals based on:

1. Compliance with 702 KAR 4:060 and 702 KAR 4:070, with special concern to reduce change orders during construction;

2. Each plan sheet and cover of specification booklet has the architect's seal and signature affixed;

3. Documents are of sufficient detail and complexity that they may be used:

a. To obtain a building permit;

b. As instruments in the competitive bidding process; and

c. By a general contractor to construct the project;

4. BG-3 does not exceed by ten (10) percent the approved BG #1 budget;

5. Deed, certificate of title insurance to the property, deed of easements for all utilities, and proof of road and utility access for the project are filed with the division;

6. Proposed floor elevation is a minimum of one (1) foot above the 100-year flood plain elevation for new construction and no state funds are proposed for renovation below the 100-year flood plain elevation;

7. Construction documents include the following forms to the extent applicable with KDE amendments appropriate for general construction or construction management:

a. AIA A201, general conditions;

b. AIA A201/CMa, general conditions with CM;

c. AIA A101, owner-contractor contract;

d. AIA A101/CMa, owner-contractor contract with CM;

e. AIA A701, instructions to bidders;

f. KDE form of proposal;

g. AIA A312, performance and payment bond;

h. AIA G702, application for payment;

i. AIA G702/CMa, application for payment with CM;

j. AIA G701, change order;
k. AIA G701/CMa, change order with CM;
l. AIA G704, certificate of substantial completion;
m. AIA G704/CMa, certificate of substantial completion with CM;
n. AIA G706, contractors' affidavit of payment;
o. AIA G706A, contractors' affidavit of release of liens;
p. AIA G707, consent of surety to final payment; and
q. AIA G707A, consent of surety to retainage reduction.

8. A 100 percent performance and payment bond is required for any contract in excess of $25,000 and on all contracts using CM process from an insurance firm authorized to do business in Kentucky. The insurance firm shall be listed in and the performance and payment bond shall be written within the terms and limits established in 58 Federal Register, P. 35778, 1993.

9. Contractor(s) are to carry all insurance required by law and by contract to hold the board safe from loss until the project is completed or an occupancy permit is received by the board. In the event the board elects to carry a portion of the necessary insurance, notification shall be given to the architect and CM and written into the bidding documents; and

10. Notification of other state and local agencies having jurisdiction, including:

(a) Department of Housing, Buildings and Construction;
(b) Division of Code Enforcement;
(c) Division of Plumbing;
(d) Division of Water;
(e) Division of Air Quality;
(f) Local health department; and
(g) Local building inspector.

(4) The board shall receive written approval of the construction bidding documents and authorization to bid from the division prior to advertisement for bids.

(5) Performance specification procedures may be used by the board for proposed capital construction projects. The proposed performance specifications as prepared by the board shall be approved in writing by the division prior to advertisement for bids.

(6) Leases, lease purchases, or leases with an option to purchase by a board for fixed equipment, capital construction, or alterations to existing buildings and building systems shall require the submittal of plans and specifications and lease documents to the division for review and approval.

Section 7. Construction Bidding and Contracting. (1) A minimum of ten (10) working days prior to the scheduled bond sale date, the board shall submit to KDE for review and approval:

(a) To the division:
1. Bid tabulation(s);
2. Bid security(ies);
3. Proposal form of successful bidder(s);
4. Proposed contract(s) or purchase order(s) (unsigned); and
5. Revised financial form (BG #1, page 3) to coincide with proposed construction costs; and

(b) To the Division of Finance, KDE:
1. Preliminary official statement;
2. Notice of bond sale; and
3. Official terms and conditions.

(2) If the submitted documents are not in an approvable form at least five (5) working days before the scheduled bond sale, the sale date shall be postponed.

(3) The board shall contract with a fiscal agent to assist in meeting all reporting, filing, and selling requirements for securing the financial approval of KDE when school revenue bonds are proposed for sale.

(4)(a) Bids for school revenue bond sales shall be received in Frankfort, Kentucky, at:

1. Kentucky Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower; or
2. SFCC, Capital Annex, if SFCC funds are involved.

(b) A KDE or SFCC staff member shall be present to receive the bids.

(c) Bids shall be delivered by mail, in person, by telephone, or by facsimile (fax) machine. If the apparent winning bid is telephoned, the bid shall be reaffirmed by fax within thirty (30) minutes after the bid opening.

(5) The division shall approve a proposed construction contract based on:

(a) Submission of tabulation of bids, form of proposal, bid security and proposed contract;
(b) Board indicating low bid was accepted or written justification provided where other than low bid is proposed;
(c) Proposed construction contract is within approved budget; and
(d) Form of proposal is completed in accordance with the instructions to bidders.

(6)(a) Any discrepancies between the proposed contract and bidding documents shall be remedied prior to approval.

(b) The board's desire to waive irregularities and informalities as to a bid shall be reviewed and final judgement made by the division prior to approval of the contract and financing plan.

(c) Approval of the proposed contract by division shall not indicate the contract is the best or the most reasonable.

(7) The Division of Finance, KDE, shall issue the final approval for the financing plan, authorize the bond sale, and prepare the letter for the chief state school officer's approval.

(8) No negotiation of the bid price shall be allowed, except in accordance with KRS 45A.375 for those districts under the Model Procurement Code.

(9) Construction account expenditures that are subject to bidding shall be approved by the division, except for expenditures for moveable equipment.

(10) The board shall submit to the division:
(a) Copy of the executed contract(s) and purchase order(s);
(b) Insurance certificate(s); and
(c) Copy of the 100 percent performance and payment bond(s).

Section 8. Contract Change Orders. (1)(a) Changes in the contract which do not substantially alter the nature of the contract, or may be regarded as incidental to or which relate to an integral part of the original contract and specifications, may be approved by the division.

(b) A copy of any change order using the forms AIA G701 or AIA G701/CMa issued in connection with the project shall be signed by the appropriate parties as a recommendation and shall be subject to approval by the board.

(c) All change orders shall be submitted to the division.

(2) Any additive or deductive change order proposal in excess of $2,500 shall be subject to approval by the division prior to authorization by the board. All change order forms shall be accompanied with the following:

(a) Copy of local board action approving the change order;
(b) Properly completed KDE change order supplemental information; and
(c) Cost breakdown which separates labor, material, profit and overhead. If unit prices are utilized, this cost breakdown shall not be necessary.

(3) Approval of proposed change orders over $2,500 shall be based upon:

(a) Completed supplemental information form, board order, and cost breakdown;
(b) Cost is calculated according to contract unit prices or alternative method documentation is provided to support cost;
(c) The change order scope and cost is considered within the norms based upon the information submitted; and
(d) Cumulative cost of contract and all change orders are within the approved budget.

(4) The division approval shall not indicate the change order cost is the best cost or the requested change order is the most appropriate action.

Section 9. Construction Contract Retainage. (1)(a) The board shall withhold ten (10) percent of the first $1,000,000 and five (5) percent of the completed performance above $1,000,000 of the contract price of the work until the work is substantially completed.

(b) Upon substantial completion of the work, the ten (10) percent retainage may be reduced to five (5) percent with certification of the architect and approval of the board.

(c) No part of the five (5) percent retainage shall be paid until the division has made a final inspection of the completed construction and has provided written approval.

(d) If after receipt of the punch list, reasons for reduction of the retainage are certified in writing by the architect and approved by the board, a reduction to a lump sum amount less than the five (5) percent retainage may be approved by the division when deemed reasonable and advisable. The minimum lump sum amount shall be twice the estimated cost to correct the punch list items.

(e) The board shall request the final inspection after approval of the architect's certification of substantial completion.

(2) The investment earnings resulting from any agreement entered into by a board involving the construction account, including the construction contract retainage for an approved project, shall be invested in such a manner that any additional income from the investment shall accrue only to the board.

Section 10. Construction Dispute Resolution. (1) Unresolved claims between parties arising out of or relating to any contract subject to this administrative regulation shall not utilize arbitration or the procedures of the American Arbitration Association unless agreed to by all parties.

(2) Prior to the institution of legal proceedings, unresolved claims arising out of or relating to any contract shall be submitted to mediation under the procedures of the Mediation Center of Kentucky, 201 West Short Street, Suite 301, Lexington, Kentucky or any other nonprofit mediation council approved by the division.

(3) Mediation may be initiated by written request filed by any party in accordance with the center's procedures currently in effect.

Section 11. Construction Contract Close-out Process. (1) The architect shall furnish the board a form BG #4 with applicable information requesting final approval.

(2)(a) If the board agrees the construction contract is complete, it shall approve the BG #4 and forward it to the division for approval of the final payment.

(b) If the board does not agree that the construction contract is complete, a letter to the division shall be issued to indicate those items in contention or requiring completion.

(3) Written approval by the division authorizing full payment of the contract shall be given when the completed BG #4 form is approved.

Section 12. Penalties for Malfeasance or Nonfeasance. (1) A determination by the board or the division of malfeasance or nonfeasance by the architect or CM shall be forwarded to the chief state school officer.

(2) The chief state school officer may make a recommendation to the SBESE to determine that the offending firm is ineligible to provide professional services on school construction projects for a period not to exceed five (5) years.

(3) The SBESE may prescribe alternative penalties.

(4) If the principals of the offending firm become associated with another firm(s) during the penalty period, upon recommendation by the chief state school officer the SBESE may determine that the penalty invoked shall also apply to that firm.

Section 13. Documents Incorporated By Reference. (1) The following documents used in the capital construction process are hereby adopted and incorporated herein by reference:

(a) BG #1-May, 1993, Project Application;

(b) AIA B141-1987, Standard Form of Agreement Between Owner and Architect and KDE Amendment, May, 1993;

(c) AIA B141/CMa-1992, Standard Form of Agreement Between Owner and Architect, Construction Manager-Adviser Edition, and KDE Amendment, May, 1993;

(d) KDE Noncollusion Affidavit, May, 1993;

(e) KDE Architect RFP, May, 1993;

(f) KDE Architect Fee Guideline, May, 1993;

(g) KDE Construction Manager (CM) RFP, May, 1993;

(h) AIA B801/CMa-1992, Standard Form of Agreement Between Owner and Construction Manager and KDE Amendment, May, 1993;

(i) KDE CM Fee Guideline, May, 1993;

(j) BG #2, May, 1993, Outline Specifications;

(k) BG #3, May, 1993, Estimate of Probable Construction Cost;

(l) AIA A201-1987, General Conditions of the Contract for Construction and KDE Amendment, May, 1993;

(m) AIA A201/CMa-1992, General Conditions of the Contract for Construction-Construction Manager-Adviser Edition, and KDE Amendment, May, 1993;

(n) AIA A101-1987, Standard Form of Agreement Between Owner and Contractor and KDE Amendment, May, 1993;

(o) AIA A101/CMa-1992, Standard Form of Agreement Between Owner and Contractor-Construction Manager-Adviser Edition, and KDE amendment, May, 1993;

(p) AIA A701-1987, Instructions to Bidders and KDE amendment, May, 1993;

(q) KDE Form of Proposal, May, 1993;

(r) AIA A312-1984, Performance Bond and Payment Bond and KDE amendment, May, 1993;

(s) AIA G702-1992, Application and Certificate for Payment;

(t) G702/CMa-1992, Application and Certificate for Payment-Construction Manager-Adviser Edition;

(u) AIA G701-1987, Change Order;

(v) AIA G701/CMa-1992, Change Order-Construction Manager-Adviser Edition;

(w) AIA G704-1992, Certificate of Substantial Completion;

(x) AIA G704/CMa-1992, Certificate of Substantial Completion-Construction Manager-Adviser Edition;

(y) AIA G706-4/70, Contractors' Affidavit of Payment of Debts and Claims;

(z) AIA G706A-4/70, Contractors' Affidavit of Release of Liens;

(aa) AIA G707-4/70, Consent of Surety to Final Payment;

(bb) AIA G707A-6/71, Consent of Surety to Reduction in or Partial Release of Retainage;

(cc) 58 Federal Register, p. 35778, 1993;

(dd) KDE Change Order Supplemental Information, May, 1993; and

(ee) BG #4, May, 1993, Final Approval and Payment Application.

(2) These documents are available for inspection, copying (subject to copyright law), and, except for the AIA forms, may be obtained from the Division of Facilities Management, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The AIA forms are available for purchase from the American Institute of Architects by addressing the request to: AIA Order Dept., 9 Jay Gould Court, P. O. Box 753, Waldorf, MD 20604 or by calling 800-365-2724.

Section 14. 702 KAR 4:010, Construction project application; 702 KAR 4:020, Plans and specifications for construction; 702 KAR 4:030, Local board's contract with architect, engineer; and 702 KAR 4:040, Contract completion; changes; retainage; are hereby repealed.

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

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: November 15, 1993

FILED WITH LRC: November 15, 1993 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993, at 10 a.m. in the State Board Room, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by December 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 shall 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. Anyone wishing to comment but not caring to be heard at the public hearing, may submit written comments on the proposed administrative regulation. Written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation should be addressed to Kevin M. Noland, General Counsel, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael L. Luscher

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: Since most items are presently being completed by the board of education, no increase is expected and potential for savings because of better oversight of the planning process is possible.

(1) First year: Minor increase or savings dependent upon district.

(2) Continuing costs or savings: Minor increase or savings dependent upon district.

(3) Additional factors increasing or decreasing costs (note any effects upon completion):

(b) Reporting and paperwork requirements: Additional planning by local boards and oversight of the architect should improve competition and bidding.

(2) Effects on the promulgating administrative body: New regulation requirements have been in effect by policy, thereby not increasing the effect of this revision.

(a) Direct and indirect costs or savings:

(1) First year: No projected increase or decrease in costs.

(2) Continuing costs or savings: None projected.

(3) Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No significant increase in paperwork requirements of existing regulations.

(3) Assessment of anticipated effect on state and local revenues: No appreciable effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives reviewed through two committees selected by various groups being effected by the regulations.

(5) Identify any statute, administrative regulation or governmental policy which may in conflict, overlapping, or duplication: KRS 162.065 requires this regulation be promulgated which consolidates existing regulations and new regulations provides clearer and more concise process for local boards of education.

(a) Necessity of proposed regulation if in conflict: Not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied: No. Applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board

704 KAR 20:251. Professional certificate for teaching the moderately and severely disabled.

RELATES TO: KRS 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

NECESSITY AND FUNCTION: KRS 161.020 requires that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.030 requires teacher education institutions to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the professional certificate for teaching the moderately and severely disabled, the teacher performance standards, and the standards for approval of programs leading to such a certificate.

Section 1. Definitions. (1) "Moderate and severe disability" means cognitive disabilities impeding an individual's access to a regular education curriculum. Individuals with moderate and severe disabilities may also exhibit disabilities including: sensory, motor, health, communication, or behavioral problems.

(2) "Collaboration" means an arrangement in which a teacher of exceptional children provides specially designed instruction and related services to students with disabilities in a regular classroom and collaborates with the regular classroom teacher to provide specially designed instruction and related services.

(3) "Inclusion or inclusive education" means a primary placement within an age-appropriate regular education classroom with full supports provided for individualized services and pull-out to a special education class only when individual instructional needs cannot be met even with adaptations.

(4) "Teacher performance standard" means a standard that a certified educator of the moderately and severely disabled shall be able to demonstrate in the performance of teaching and managing functions in the workplace. Each teacher performance standard describes the general set of teaching or managing tasks that an educator of the moderately and severely disabled shall perform and the contexts for performance of the tasks.

(5) "Cultural diversity" means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socio-economic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

Section 2. (1) The professional certificate for teaching the moderately and severely disabled shall be issued to an applicant who has completed a bachelor's degree and the approved program of preparation for this certificate as described in Sections 6, 7, and 8 of this administrative regulation at a teacher education institution approved by the Education Professional Standards Board. In addition, the applicant shall complete the written tests and a one (1) year internship as provided in this administrative regulation.

(2)(a) In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least the following minimum passing scores on the tests identified below:

1. The NTE core battery tests:
a. Communication skills, 646;
b. General knowledge, 643;
c. Professional knowledge, 644.
2. NTE specialty test: special education, 500.

(b) The tests may be waived for certified out-of-state teachers who have two (2) or more years of successful experience in a position teaching individuals with moderate and severe disabilities on at least a half-time basis.

(3) Upon successful completion of an approved program of preparation and the specified testing, the Education Professional Standards Board shall issue a statement of eligibility in accordance with KRS 161.030.

(4) The Education Professional Standards Board shall issue the one (1) year certificate for the beginning teacher internship as provided in KRS 161.030 and 704 KAR 20:320 upon applicant's confirmation of employment in a position teaching individuals with moderate and severe disabilities on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.

(5) The beginning teacher internship may be waived for out-of-state applicants who have completed two (2) or more years of successful experience in a position teaching individuals with moderate and severe disabilities.

Section 3. (1) The Education Professional Standards Board shall issue a professional certificate for teaching the moderately and severely disabled for a duration period of five (5) years, except as follows:

(a) The initial certification for the beginning teacher internship shall be issued for a duration period of one (1) year. The certificate shall be extended for the remainder of the five (5) year period upon successful completion of the beginning teacher internship as provided in 704 KAR 20:320.

(b) Recency of preparation shall be a prerequisite for the issuance of certificates as provided in 704 KAR 20:045. An initial certificate valid for a one (1) year period shall be issued to an applicant who has completed the program of preparation more than five (5) years preceding the date of receipt of the certificate application form or who has not completed six (6) semester hours of graduate credit from a planned fifth-year program within the five (5) year period. The certificate shall be extended for the remainder of the five (5) year period upon completion of the six (6) semester hours of graduate credit by September 1 of the year of expiration.

(c) The recency of preparation requirement shall be waived for applicants for initial Kentucky certification who have completed a planned fifth-year program provided they have completed three (3) years of successful teaching experience within the last five (5) years.

(2) The first five (5) year renewal shall require completion by September 1 of the year of expiration of fifteen (15) semester hours of graduate credit from a planned fifth-year program.

(3) The second five (5) year renewal shall require completion of the planned fifth-year program as defined in 704 KAR 20:020 by September 1 of the year of expiration.

(4) After completion of the planned fifth-year program, the certificate shall be renewed for subsequent five (5) year periods upon completion of three (3) years of successful teaching experience or six (6) semester hours of credit in a related teaching field by September 1 of the year of expiration.

Section 4. The professional certificate for teaching the moderately and severely disabled shall be valid at any grade level for the instruction of individuals with moderate and severe disabilities. Persons holding this certificate shall serve as primary developers and implementers of individual programs for individuals with moderate and severe disabilities including individual education plans (IEPs) and individual transition plan (ITPs) with consultation and support from specialists according to the needs of the child (e.g., speech-language pathologists, occupational and physical therapists, nurses, psychologists, educators of the hearing impaired or vision impaired, and others).

Section 5. All teacher preparation institutions offering approved programs of preparation leading to the professional certificate for teaching the moderately and severely disabled shall establish a continuous assessment system to judge the performance of candidates on the teacher performance standards identified for this certificate.

Section 6. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the professional certificate for teaching the moderately and severely disabled shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the teacher performance standards listed in Section 8 of this administrative regulation.

(2) The program shall include a system of continuous assessment to evaluate the candidate's progress and level of attainment on the teacher performance standards and the related performance criteria. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of individuals with moderate and severe disabilities. Candidates shall be evaluated by paper and pencil tests and authentic assessments of performance.

(3) The program of preparation shall ensure that candidates from culturally diverse backgrounds are recruited and retained in the program.

(4) The program of preparation shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the Teacher Performance Standards with children from culturally diverse backgrounds.

Section 7. Application for Program Approval. (1) A teacher education institution which proposes to offer a program of preparation leading to the professional certificate for teaching the moderately and severely disabled shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description which includes the following:

(a) Program outcomes: include teacher performance standards for teachers of individuals with moderate and severe disabilities.

(b) Program components: provide list of coursework, clinical and field experiences, and student teaching related to general education, specialty studies, and professional studies.

(c) Faculty: provide a list of faculty responsible for and involved with the conduct of the specific program and their qualifications.

(d) Students: describe student (including minority) admission and retention policies and procedures that are specific to this program.

(e) Plan for assessment: description of the system of continuous assessment of teacher performance standards.

(2) Institutions may receive interim program approval for a one (1) year period which may be extended for one (1) additional year while the institution develops the assessments identified in Section 6(2) of this administrative regulation. At the end of the period of interim approval the institution shall apply for full approval to the Education Professional Standards Board.

Section 8. The teacher performance standards shall be as follows:

(1) Teacher Performance Standard I. Designs and plans instruction. The teacher designs and plans instruction and learning climates that develop student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems and integrate knowledge in both school and community settings. The teacher designs instructional programs to increase active student participation with peers without

disabilities and enhanced social status in valued school and community activities;

(2) Teacher Performance Standard II. Creates and maintains learning environments. The teacher creates school and community learning environments that support the development of student's abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge in both school and community settings. In order to achieve this outcome, the teacher shall effectively manage teaching assistants and other instructional resources and be able to articulate program needs within the context of site-based management;

(3) Teacher Performance Standard III. Implements and manages instruction. The teacher introduces implements, manages instruction that develops student's abilities to use communication skills, apply core concepts; become a self-sufficient individual, become a responsible team member, think and solve problems, and integrate knowledge in both school and community settings. The teacher implements instructional programs that enhance the student's social participation in valued activities in family, school, and community settings. The teacher provides opportunities for instruction and inclusion in all areas of school life, including extra curricula activities and school clubs;

(4) Teacher Performance Standard IV. Assesses and communicates learning results. The teacher assesses learning and communicates results to students and others with respect to student abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge in both school and community settings. The teacher actively involves the family in the assessment process and uses assessments tied to the performance of "real-life" tasks. Assessment purposes include:

(a) Determining learning results;

(b) Screening;

(c Identification and eligibility for services;

(d) Program evaluation;

(e) Progress on IEPs; and

(f) Transition to the next educational setting or postschool placement;

(5) Teacher Performance Standard V. Reflects and evaluates teaching and learning. The teacher reflects on and evaluates specific teaching and learning situations and programs. The teacher articulates a philosophy for working with students with moderate and severe disabilities and identifies ethical issues concerning life planning for these students;

(6) Teacher Performance Standard VI. Collaborates with colleagues, parents, and others. The teacher collaborates with colleagues, parents, and other agencies to design, implement, and support learning programs that develop student's abilities to use communication skills, apply core concepts, become self-sufficient individuals, become responsible team members, think and solve problems, and integrate knowledge in both school and community settings. The teacher identifies critical issues, events, and decisions from a family's point of view (e.g., transitional stages).

(a) The teacher develops a student-centered team, with the teacher as the most frequent team leader. Other members of the student team may include:

1. The family;

2. The student (as appropriate);

3. Regular educators;

4. Related service personnel as needed (e.g., speech-language pathologist, physical or occupational therapist, school nurse, hearing or vision consultant, mobility specialist, etc.);

5. The building principal; and

6. Other agency representatives (e.g., vocational rehabilitation, adult services, preschool program, child's physician, etc.) as needed;

(b) The teacher shall be knowledgeable of the roles and domains of the other members of the team; e.g., the educational issues for students with special health care needs, including medical terminology, implications for educational programming, and a basic knowledge of critical health support procedures; and (7) Teacher Performance Standard VII. Engages in professional development. The teacher evaluates his overall performance with respect to modeling and goals established by KRS 158.6451, refines the skills and processes necessary, and implements a professional development plan.

DANIEL GREENE, Chair

APPROVED BY AGENCY: November 9, 1993

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

PUBLIC HEARING: A public hearing on this administrative regulation will be held on December 29, 1993, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 24, 1993, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. Contact Person: Dr. Roland Goddu, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, KY 40601, 502 564-4606.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: 8 institutions of higher education, approximately 120 students enrolled in certification programs, approximately 50 candidates applying for certification annually, and 178 local school districts.

(a) Direct and indirect costs or savings to those affected:

(1) First year: Costs to institutions of higher education for revising current programs to meet new standards and offer the preparation program. Tuition costs to candidates for approximately 50-60 credit hours of professional preparation required for certification. Also, candidates must pay examination fee for required tests. Changes in tuition costs and examination fees should be minimal since program combines two existing programs.

(2) Continuing costs or savings: Same as above except for the costs of program revision to institutions of higher education.

(3) Additional factors increasing or decreasing costs: (Note any affects upon competition): None

(b) Reporting and paperwork requirements: Institutions of higher education must file revised program for approval by the Education Professional Standards Board, must maintain records on candidates in preparation programs to verify satisfactory progress in meeting outcomes requirements. Candidates must file application for receiving certification.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

(1) First year: Costs associated with communicating standards and requirements for the new certificate to institutions of higher education, prospective candidates, and school districts. costs associated with program approval, issuance of certificates and associated recordkeeping.

(2) Continuing costs or savings: Same as above.

(3) Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Office of Teacher Education and Certification must review preparation programs and recommend approval or denial to the Education Professional Standards Board and review applications from candidates for

certification. Maintain records on approved programs and certificates issued.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Qualified teachers with specific preparation to teach students with moderate and severe disabilities are necessary for quality of instruction for these students. The new certificate combines two categories of current certificates into one.

(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: N/A

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied: No. Certification requirements are uniformly applicable to all individuals.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:585. Estate recovery.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520, 42 USC 1396a, b, d, p

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Medicaid Program. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth provisions relating to estate recovery.

Section 1. Definition of Estate. The term "estate," with respect to a deceased individual, shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of state probate law.

Section 2. General. The Cabinet for Human Resources shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the Medicaid state plan in accordance with the requirements shown in 42 USC 1396p(b)(1).

Section 3. Hardship Waiver. The cabinet shall waive the application of the recovery provision when recovery would work an undue hardship as determined on the basis of criteria established by the Secretary, United States Department of Health and Human Services.

Section 4. Death Notification. (1) A provider participating in the Medicaid Program having knowledge of a Medicaid recipient's death shall furnish in writing within ten (10) days to the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, the following data:

(a) Recipient's full name;

(b) Medical assistance ID number;

(c) Date and place of death;

(d) Homestead address (other than a medical facility address);

(e) Address on medical assistance identification card;

(f) Name and address of responsible party or guardian.

(2) If a Medicaid recipient expires in a Kentucky licensed health care facility participating in the Medicaid Program, the facility shall be responsible for reporting the death.

HAROLD R. BLOM, Commissioner
FONTAINE BANKS, JR., Secretary

APPROVED BY AGENCY: October 21, 1993

FILED WITH LRC: November 1, 1993 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1993 at 9 a.m. in the Vital Statistics Conference Room, First Floor East, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: W. K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Harold R. Blom

(1) Type and number of entities affected: All Medicaid recipients and providers may potentially be affected.

(a) Direct and indirect costs or savings to those affected: Negligible

1. First year:

2. Continuing cost or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: Medicaid providers will be required to report death of recipients when known.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $300,000 (savings).

2. Continuing costs or savings: $500,000 (savings).

3. Additional factors increasing or decreasing costs: Phase-in of program of recovery.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or 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: It is assumed that any substantive administrative cost relating to this action will be absorbed within the current organizational structure.

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the provi-

sions of OBRA '93 codified at 42 USC 1396p relating to the Medicaid Program are mandatory and shall be adopted.

2. State compliance standards. The amendments proposed are consistent with the established policy of the Commonwealth to comply with federal mandates as enunciated in KRS 205.520(3).

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation implements the federal mandated standards relating to Medicaid estate recovery set forth in OBRA '93 codified in 42 USC 1396p.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the November 1, 1993 Meeting

The November meeting of the Administrative Regulation Review Subcommittee was held on Monday, November 1, 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 October 4, 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: Jill LeMaster, Livingston Taylor, Executive Branch Ethics Commission; George Russell, Maryellen Allen, State Board of Elections; Julie True, Daniel F. Egbers, Frank Willey, Department of Personnel; Hanson Williams, Personnel Board; Sue G. Simon, Sharon Fields, Department for the Blind; George Parsons, Department of Vocational Rehabilitation; William P. Hanes, Pam Johnson, Kentukcy Retirement Systems; Brent Irvin, Linda O. Loughlin, Board of Dentistry; Bill Pettus, Board of Embalmers & Funeral Directors; Dave Nicholas, Board of Veterinary Examiners; Robert W. Fentress, State Board of Registration for Professional Engineers & Land Surveyors; Tom Bennett, George Wright, Fish and Wildlife Resources; Terry Anderson, Martha L. Hall, Phillip Shepherd, Jack A. Wilson, Kay Harker, Beverly Oliver, Bob Logan, Millie Ellis, Don Dott, Diana Andrews, Greg Copley, Ken Hines, David G. Gore, John E. Hornback, Natural Resources and Environmental Protection Cabinet; Jack B. Hall, Petroleum Storage Tank Environmental Assurance Fund Commission; Jack Damron, Louis Smith, Brenda Priestley, Department of Corrections; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Audrey T. Carr, Dianne Worthy, Debbie Schumacher, Department of Education; James Gary Lee, L.T. Grant, Valerie Salven, Department for Workers' Claims; Anita Travis, Mark Yancey, Douglas Riddell, John Draper, Karen Doyle, Ked Fitzpatrick, Jeanne Southworth, Michael Cheek, Virginia K. Smith, Ralph Von Derau, Eric Friedlander, Dave Crawe, Cabinet for Human Resources; John W. Combs, Charles B. Wells, Kentucky Association of State Employees; Walter C. Martin, Alan Neal Co. & F.S. Land Co.; J. Tracy Spencer, Spencer Group; Ronnie Coleman, Merck & Co.; Laura Knoth, Sam Crawford, Kentucky Farm Bureau; Wayne Hunt, Gene C. Hale, Dan Hutson II, Marney Nunnally, KFACA; Freeland Edwards, Petroleum Monitoring, Inc.; Mike Helton, Kentucky Petroleum Council; Michael M. Kumpf, B.P. America; G. Morgan Kelly, G. Morgan Kelly & Associates; David Sauer, Ashland Petroleum Co.; Jan Gould, Kentucky Retail Federation; Robert L. Barnett, Jr., Kentucky Pharmacists Association; Martin Cothran, The Family Foundation; Lyle D. Cobb, Kentucky Respiratory Care Association; Stacy Buckles, Renae Price, Saints Mary & Elizabeth Hospital; Tony Sholar, Kentucky Chamber of Commerce; Joseph E. Wind, Northern Kentucky Chamber of Commerce; W. Terry McBrayer, Reduced RVP Coalition; Ray Crawford; Frank DeLisi.

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, as amended, complied with statutory requirements:

Executive Branch Ethics Commission

9 KAR 1:040. Initial registration statement and registration card. This administrative regulation was amended to comply with the format requirements of KRS 13A.220(4), and to require an original signature in blue ink on the Initial Registration Statement.

Personnel Board

101 KAR 1:335. Employee actions. This administrative regulation was amended to :(1) delete the citation of KRS Chapter 13A in the STATUTORY AUTHORITY paragraph; (2) create a definitions section, and to delete the definition contained in Section 4(4); and (3) delete "is" and insert "shall be" in lieu thereof, in order to comply with KRS 13A.222(4)(b).

Personnel Department

Charles Wells, Kentucky Association of State Employees, stated that he objected to the provision permitting the Department to dismiss employees who had been on sick leave for more than one year, and that the Department should be required to lay off such employees to permit them to be placed on reemployment registers. He added that the dismissal of such employees violated: (1) laws governing workers' compensation, the Americans with Disabilities Act (ADA), and the merit system requirements relating to layoffs established under KRS Chapter 18A; (2) the provisions of KRS Chapter 18A granting the Personnel Board jurisdiction over dismissals; and (3) the provisions of KRS Chapter 18A limiting dismissals to cause. In response to Mr. Wells and questions raised by Representative Yates, Department personnel stated that: (1) the dismissal of an employee after having been on sick leave in excess of one year was an existing provision and not a new provision, and was within the Department's authority; and (2) dismissal occurs only after exhaustion of all other leave to which an employee is entitled. Department personnel agreed with Representative Yates' statement that an employee who was not sick was granted a longer period of time on leave before dismissal, and added that choosing resignation, rather than a leave, would permit an employee to be reinstated and avoid dismissal.

Chairman Kerr asked whether an employee still would be subject to dismissal if he was on sick leave because of a work-related injury. Department personnel responded that: (1) such an employee could avoid the provision relating to dismissal after a sick leave longer than one year because they would be able to buy back their sick leave with workers' compensation benefits; (2) the Department's review of ADA and workers' compensation laws did not establish that the dismissal provision violated either law; and (3) the Department encourages employees to resign, after exhaustion of all leave and the one year period in order to be eligible for reinstatement.

John Combs, a state employee, stated that dismissal was improper and unfair to employees injured on the job and appeared to circumvent the provisions of KRS Chapter 18A that restrict dismissal of an employee to dismissal for cause. He added that: (1) ADA required reinstatement to a position which the employee was qualified to fill and prohibited an arbitrary dismissal based on the fact that such an employee could not perform the duties of the position he held prior to his injury; (2) KRS Chapter 18A does not mandate or provide for dismissal after a sick leave greater than one year; (3) the layoff provisions of KRS Chapter 18A apply to an employee on sick leave; and (4) the dismissal provision would cause greater harm to employees in smaller agencies in which the vacant positions to which they could return would be fewer if the layoff positions are not applicable. Department personnel stated that the layoff provisions of KRS Chapter 18A specifically and exclusively govern layoffs due to revenue shortfall, lack of work, or changes in state agency employment requirements, and did not include dismissals or termination of the employer-employee relationship of employees on sick leave. In response to a question by Senator Kafoglis, Department personnel confirmed that this provision would affect an employee who had been on sick leave for a period including paid sick and vacation leave and an additional year after the exhaustion of such paid leave.

George Parsons, Department of Vocational Rehabilitation, stated that ; (1) prior to this amendment, a person whose unpaid sick leave exceeded one year was laid off; (2) this administrative regulation, as

amended, restricts the ability of an employee to return to state employee because, unlike the provisions relating to layoffs, an employee is restricted to budgeted positions in the agency rather than positions in all state agencies; (3) the state as employer should go beyond the strict requirements of ADA to accommodate an employee in order to avoid potential liability under ADA; (4) while management at the department level would be aware of the need to accommodate an employee, those at a lower level would not be, thus subjecting the state to potential liability; and (5) application of the layoff provisions requiring placement on the employment register and consideration for reemployment for jobs throughout state government would be such an accommodation of the employee and would avoid potential liability under ADA.

Sue Simon, Department of the Blind, supported the position that the layoff provision should apply, particularly since the absence of the employee was due to reasons beyond his control, that is, his illness. She added that: (1) provisions in KRS Chapter 18A that relate to dismissal restrict dismissal to cause, as a punitive action; (2) the dismissal provision in this administrative regulation would be a dismissal that was not for cause and, as a punitive action not based on employee misconduct, a violation of KRS Chapter 18A; and (3) ADA applies, and failure to accommodate a sick employee by implementing the dismissal provision would violate it. Ms. Simon raised the issue of confidentiality with regard to sick employees.

Department personnel stated that new language in this administrative regulation ensures compliance with ADA because it specifically provides that, upon expiration of the one year unpaid sick leave period, dismissal will occur only if the employee's agency is unable to place him in a vacant budgeted position for which he qualifies and for which he shall be given priority if he is capable of performing the functions of the position with or without reasonable accommodation.

It was pointed out that the provisions of KRS Chapter 18A governing layoffs were restricted to layoffs due to a lack of work or revenue shortfall, that KRS Chapter 18A did not provide for the dismissal or reinstatement of a sick employee, and perhaps should be amended at the next regular session to address the issues raised by this administrative regulation.

The following two administrative regulations were amended to: (1) delete the citation of KRS Chapter 13A in the STATUTORY AUTHORITY paragraph; and (2) delete Section 4, relating to sick leave sharing, because the Department believed sick leave sharing should be contained in a separate administrative regulation pursuant to KRS 13A.221(1).

Classified

101 KAR 2:100. Leave regulations

Unclassified

101 KAR 3:010. Leave regulations for unclassified service.

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. This administrative regulation was amended to comply with (1) KRS 13A.220(4) format requirements; and (2) amending Section 1(6) to specify the definition of a "Dental Health Care Worker" which was formerly over broad.

Brent Irvin, attorney for the Board of Dentistry explained that the amendment tightens the language defining a dental health care worker.

Senator Huff asked if any present public safety statutes or regulations have mandatory requirements for reporting health status, particularly as it relates to positive HIV or HBV, to a licensing agency for either, practitioners, licensees or patients.

Mr. Irvin responded that the Board believes it has statutory authority to regulate the practice of dentist to protect public safety under two provisions: (1) KRS 313.130(7), which allows the Board to discipline through license revocation or suspension, "such physical or mental disability, or other condition, that continued practice would be dangerous to patients or to the public; and (2) the enabling statute, KRS 313.220(4), gives the Board broad authority to regulate for the health and welfare of the public, as KRS 313.220(4) provides that the Board may...regulate the practice of dentistry and the use of dental auxiliary personnel in this state.

Senator Huff also asked if the Board believes its statutory authority is broad enough to require mandatory reporting.

Mr. Irvin explained that the Board had considered the issue of mandatory reporting, and had extensive discussions with officials from the Cabinet for Human Resources, attorneys for the Board of Medical Licensure and Board of Nursing. After these discussions the Board of Nursing amended its administrative regulation to remove the mandatory reporting requirement after considerable consternation from the Civil Liberties Union and several licensing boards.

Mr. Irvin stressed that requiring mandatory reporting would place many professional health care workers in a difficult position and result in many being put out of business. It is not the intention of the Board, he noted, to put a licensee out of business, but rather to protect the public. Voluntary reporting, he added, would protect the general public and the professional because a dentist who has AIDS: (1) would be assured of confidentiality protections by an expert review panel considering each individual case as this administrative regulation proposes; (2) must be given the same protections under the Americans with Disabilities Act as any other person with a disability and the Board is without authority to revoke a license because they have AIDS without attempting to make an accommodation; and (3) would be protecting themselves from future liability by reporting their health status to a secret "expert review panel" and possibly averting suit by a patient.

Senator Huff stated that if the Board's primary interests is to protect the public, then the Board needs to tighten down on infected persons who are practicing and able to communicate a serious disease such as AIDS. He asked if Mr. Irvin had knowledge of any statutory or regulatory changes the state of Florida has since the incident involving the dentists with AIDS who infected patients.

Mr. Irvin responded that he was not aware of any initiatives in Florida relating to mandatory disclosure. He added, that this administrative regulation makes strong provisions for universal precautions which will protect the public in all instances, these include: hand and skin washing, protective barriers, and care in the use and disposal of needles and other sharp instruments.

Senator Huff stated that over 5 million persons in the military have been tested under federal law, and he did not see any reason why state licensing agencies should not follow suit. He noted that he is not advocating putting people out of work, but he is concerned that a serious disease could be transmitted by a health care worker or a patient. He asked the Board to give serious consideration to requiring mandatory reporting.

Mr. Irvin responded that he agreed the Board believes the safety of the public is a primary concern, and the Board is making every effort to require precautions and still comply with the Americans with Disabilities Act.

Chairman Kerr asked why any person would voluntarily report AIDS or hepatitis status.

Mr. Irvin answered by saying that: (1) dentist take an oath of practice and would have an ethical obligation to do so; (2) to avoid future litigation as a patient may learn of the health status of a dentist infected by AIDS or hepatitis and later sue that practitioner. Mr. Irvin mentioned a California case in which a patient learned of his dentist AIDS status through the news media, and latter won a civil suit for emotional distress in not knowing whether he had contracted AIDS as a result of his dentist AIDS status. The California decision noted that if the dentist had gone through a voluntary reporting procedure and limited his practice, he would have taken precautions to protect the public.

Chairman Kerr asked that although the names of those persons voluntarily reporting may be held confidential by the Board, would the

actual number of reported cases each year be a confidential matter or one of public record. If not, he added, this Subcommittee may be interested in reviewing the success of the reporting requirement.

Senator Huff and Senator Kafoglis asked if the licensure renewal procedure for dentist includes any questions or inquiries relating to health status. Mr. Irvin stated that he is unaware whether the current renewal application includes such inquiries, but the Board would agree to look at that suggestion and possibly incorporate those types of questions.

Board of Veterinary Examiners

201 KAR 16:010. Code of ethical conduct. This administrative regulation was amended to comply with (1) KRS 13A.222(4) drafting requirements by amending Sections 4, 11(2), 12(1) and (2), 15, 17, 28, 32, 33 and 35.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:200. Minimum standards of practice for mortgage inspections in Kentucky. This administrative regulation was amended to comply with (1) KRS 13A.222(4) drafting requirements by amending Sections 1(2)(a), 2(3)(a) to (h), 2(3)(g), 2(4), 3(1) and (5), and 5(2).

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:140. Seasons for wild turkey. Commissioner Tom Bennett and George Wright were present to answer questions. Section 2(1) was amended by inserting after the "(1)", "Except as specified in Section 5 of this administrative regulation" for clarification. Department personnel stated that the department was trying to simplify this administrative regulation by having one list for the spring hunting season and another for the fall season.

Representative Yates asked if a farmer needed a license to hunt a turkey on his own land. Department personnel responded that the landowner did not need a license or a permit; however, the landowner could only hunt during hunting season, unless there was an act of depredation being committed by that animal.

Several questions were asked concerning other species. It was pointed out that a landowner did not have to tag a deer unless the animal was taken off the property, and even then, a home-made tag was appropriate. Representative Bruce asked about the taking of coyotes. Department personnel stated that a coyote could be shot on sight. They stated that coyotes are here to stay even though the federal government has spent millions out West to depress the population.They stated that females have big litters and the population comes back up.

In response to a question by Representative Allen, Department personnel stated that if a turkey was taken by any agricultural practice, that was ethical.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:035. Permits. This administrative regulation was amended to assure that certain sources are exempted from the requirements of this administrative regulation.

401 KAR 50:038. Title V emission fee. This administrative regulation was amended to address a reduction in the fee to be charged for VOC emissions. The Cabinet intends to carry forward certain money already allocated for reduction of emissions so that emissions fees in Kentucky can be reduced. A task force will be used to look at the emissions fees charged in past years so that an accurate projection of future years fees can be made.

Air Pollution - Mobile Source-related Emissions

401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. This administrative regulation was amended to delete the abbreviations section of the administrative regulation and incorporate the abbreviations into the definitions section of the administrative regulation.

401 KAR 65:010. Vehicle emission control program. This administrative regulation was amended to: (1) incorporate the July 1993 U.S. EPA Technical Guidance Manual; and (2) respond to concerns raised by individuals in Northern Kentucky.

Chairman Kerr and Senator Smith complemented the Cabinet for going to Northern Kentucky to address the concerns of the Chamber of Commerce and others.

Chairman Kerr pointed out that no one wants this vehicle emissions testing program but the federal government has required Northern Kentucky to comply with the mandate in order to avoid economic and other sanctions.

Petroleum Storage Tank Environmental Assurance Fund Commission

415 KAR 1:110. Contractor costs. In response to questions by Senator Smith, Commission personnel stated that: (1) they believed the administrative regulation conformed to statutory authority; (2) laboratory costs, which are paid by the contractor, had not been included, because: (a) applicable statutes limited the Commission to contractor costs; and (b) laboratory and other costs, such as utility payments, are considered pass-through costs because they are not on-site costs, and are not subject to the control of the contractor. Senator Smith stated that, in his view, contractor costs included such off-site items as laboratory costs, and that this source of costs should be included in order to control contractor costs.

This administrative regulation was amended as follows: (1) Section 3, to comply with the drafting requirements of KRS 13A.220 and 13A.222; (2) to delete language incorporating material by reference in order to insert it in a separate incorporation by reference section (see Section 5); and (3) to renumber existing Section 5 as Section 6, and reword the section to delete the reference to an effective date and to insert a beginning enforcement date, pursuant to KRS 13A.330, which establishes the effective date of an administrative regulation.

415 KAR 1:115. Contractor certification. In response to questions by Senator Smith, relating to the development of administrative regulations establishing clean-up standards and fees established by the Commission, Commission personnel stated that: (1) the study authorized by the Commission has been completed by the Western Kentucky University and the Universities of Kentucky and Louisville and groups affiliated with them; (2) the Commission will meet on November 9 to which all are invited to review the recommendations that will be forwarded to the Cabinet for inclusion in an administrative regulation; (3) the quality and reliability of laboratories should be looked into and a determination made as to whether certification in addition to the normal certification required of them should be imposed, as is required under federal law or regulation; and (4) a schedule of fees relating to analytical tests had been established by the Commission. In response to a question by Chairman Kerr, Commission personnel stated that the schedule of fees being discussed was contained on page 6 of 415 KAR 1:110.

Senator Smith stated that expenditures from the fund in some cases appeared to be made for the correction of problems that would self-correct through dissipation, and that more exact figures are required in the new actuarial study. He added that the statute requires the Commission to establish the actual standards and requirements and does not delegate this function solely to the Cabinet.

In response to a question by Senator Huff, Commission personnel stated that the Commission had obligated all but $8 million of the funds available to it, and that another actuarial study is required because the actuarial study upon which the funding was based has been proven to be incorrect;

In response to questions raised by Senator Kafoglis concerning Sections 2, 3 and 8, Commission personnel stated that: (1) it had been determined that the additional liability coverage was unnecessary; that the prohibition against using a contractor-owned laboratory

was unnecessary because some of the best laboratories were contractor-owned and there were no state standards established for laboratories; (2) rather than consider the cost of bonding or insurance related to financial responsibility an allowable cost, the Commission deleted the requirement.

This administrative regulation was amended as follows: (1) Sections 2(1), (2) and (3), 3(1) and (2), 4(1), 5(1) and (5), 6(1), (2), and (4), 7 and 8 were amended to comply with the formatting and drafting requirements of KRS 13A.220(4) and 13A.222(4); (2) Sections 2(1) and (2) were amended to delete language incorporating material by reference in order to insert it in a separate incorporation by reference section (see Section 9); and (3) Section 9 was renumbered as Section 10, and reworded to delete the reference to an effective date and to insert a beginning enforcement date, pursuant to KRS 13A.330, which establishes the effective date of an administrative regulation.

Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary. This administrative regulation was amended to add a statutory reference to KSP 06-01-01; and to specify that inmate records requests should be screened to comply with KRS 197.025 relating to restriction on inmates obtaining their own records.

Cabinet for Human Resources: Department for Social Services: Child Welfare

905 KAR 1:010. Application for permission to place or receive a child. This administrative regulation was amended to comply with KRS 13A.010(2) by inserting the word "administrative" before the word "regulation" in Line 1 of the NECESSITY AND FUNCTION statement.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

State Board of Elections: Voting

31 KAR 5:020. Placement of voting machines.

Kentucky Employees' Retirement System: General Rules

105 KAR 1:130. Hazardous duty coverage.
105 KAR 1:210. Disability procedures.
105 KAR 1:270. Special federal income tax withholding.

Board of Embalmers and Funeral Directors

201 KAR 15:021. Repeal of 201 KAR 15:020 and 201 KAR 15:070.
201 KAR 15:030. Application for examination; fees.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Air Quality - General Administrative Procedures

401 KAR 50:034. Permit application form. Department personnel stated that this administrative regulation incorporates forms required by the federal government for: (1) operating permits; (2) construction permits; and (3) other permits required by state and federal law.

Air Quality - Hazardous Pollutants

401 KAR 57:061. Hazardous air pollutants and source categories.

Department of Corrections: Office of the Secretary

501 KAR 6:030. Kentucky State Reformatory.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005. Safety regulations.

Driver Improvement

601 KAR 13:031. Approved alcohol or substance abuse education or treatment program.

Education, Arts, and Humanities Cabinet: Department of Education: Office of Instruction

704 KAR 3:035. Annual professional development plan.
704 KAR 3:345. Evaluation guidelines.

Labor Cabinet: Workers' Compensation Board

803 KAR 25:092. Workers' compensation pharmacy fee schedule. Commissioner L. T. Grant and Valerie Salven appeared to answer questions. Senator Kafoglis asked if the provision of House Bill 1 of the 1993 2nd Extraordinary Session that prohibits the passing on of the provider tax on prescriptions was in conflict with this administrative regulation. Commissioner Grant stated that this had to come to his mind just recently, that this was one of the objections raised in the public hearing, and that the administrative regulation had been amended to take care of that. He stated he had just though about this a week ago, that it might be in violation of that provision where they could not pass on the provider tax. Senator Kafoglis stated that he did not have a problem with it, but it seemed to him to be in direct conflict with what the statute says.

Chairman Kerr stated that they would be prohibited from passing that on anyway, by statute. Commissioner Grant was asked if they were going to allow the provider tax, to which he responded that he was not sure that it relates to the provider tax. He stated that the administrative regulation says, "plus any applicable federal or state tax or assessment".

Jan Gould, Kentucky Retail Federation, stated that the provider tax was amended as it relates to prescriptions to allow the pass-through of the tax specifically to third party payors, such as insurance companies and HMOs. He also stated that insurance companies, HMOs, and other similar entities are typically the entities that are the payors of workers' compensation prescription charges. He further stated that he believes it does not conflict with the provider tax, given that the amendment was added to that provider tax.

Commissioner Grant responded that the administrative regulation specifies only "plus any applicable federal or state tax or assessment", and if it is not applicable, it is not applicable.

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities

902 KAR 20:350. Boarding homes. Questions had been raised concerning: (1) the definition of "resident", and whether it added to or otherwise altered the statutory definition of boarder established in KRS 216B.300(3); and (2) whether KRS 216B.305 and related statutes intended to include what is commonly understood by "boarding homes". Department personnel agreed with Senator Smith's comments that KRS 216B.305 was unclear as to the type of facility governed by KRS 216B.305, and his suggestion that the Cabinet meet with the sponsor to prepare legislation clarifying legislative intent.The Subcommittee approved a motion to request LRC to refer this issue to the appropriate legislative subcommittee.

Controlled Substances

902 KAR 55:020. Schedule II substances.
902 KAR 55:025. Schedule III substances.
902 KAR 55:040. Excluded over-the-counter products.
902 KAR 55:045. Exempt prescription products.

Department for Mental Health and Mental Retardation Services: Mental Health

908 KAR 2:080. Quality assurance standards for supported living services.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the November meeting upon agreement by the promulgating agency and the Subcommittee:

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Water Quality

401 KAR 5:036. Groundwater protection plans.

Department for Natural Resources: Division of Conservation

402 KAR 2:030. Soil and water conservation peer group.

Education, Arts, and Humanities Cabinet: Department of Education: Office of Learning Programs Development: Education Professional Standards Board

704 KAR 20:620. Interdisciplinary early childhood education, birth to primary. Senator Huff pointed out that compulsory education was required when children were five (5) years old. He asked the Department: (1) if there was statutory authority for this administrative regulation; (2) why this administrative regulation required preschool programs to begin at the birth of the child; (3) if the reference to birth in this administrative regulation related to services transferred to the Cabinet for Human Resources pursuant to KERA; (4) why this administrative regulation refers to the "learner outcomes" when the "outcomes" have not been established; and (5) if the Department would be willing to delete the reference to birth in the administrative regulation.

Department personnel responded that: (1) KERA requires a preschool program for at risk and disabled children pursuant to KRS 157.3175; (2) the federal government requires certain services for children with disabilities as young as birth to two (2) years of age; (3) there are provisions for early childhood services in conjunction with the family resource centers; (4) the Cabinet for Human Resources actually administers the family resource centers but they are operated by the Workforce Development Cabinet in the Department of Education; (5) this administrative regulation: (a) was filed to provide for certification of teachers for very early ages; (b) does not mandate that schools teach young children; (c) sets requirements in the event a school chooses to implement an early childhood program; and (d) is required to assure that teachers are better trained; (6) removal of the reference to birth in the administrative regulation was discussed and the Department did not feel it could delete the reference; (7) the national trend is to begin instruction with the birth of the child; (8) this administrative regulation is the result of a joint effort with the institutions of higher education who have requested this type of training

Chairman Kerr pointed out that the Department was establishing a program for teacher certification from birth to five (5) years old although there may currently be no programs for these young children.

Department personnel responded that there are programs in this age range that are not necessarily operated by the school district like the early intervention program with the infant toddlers through the mental health and retardation division. These programs are required to have the same standards as school districts.

Chairman Kerr asked if workers at the early intervention program with infant toddlers would have to be certified pursuant to this administrative regulation. Department personnel responded that: (1) certification was not necessarily required in all programs; (2) lead teachers in the early intervention, infant toddler program would have to meet the certification requirements of this administrative regulation; (3) individuals under the supervision of certified teachers would not have to be fully certified; (4) this administrative regulation classifies those individuals as Level III personnel.

Chairman Kerr stated that: (1) he has a problem with this administrative regulation and all administrative regulations that refer to the "valued outcomes" because the outcomes have not been promulgated as administrative regulations; (2) KRS Chapter 13A requires that the outcomes be promulgated by an administrative regulation before the outcomes can be used for any purpose; (3) until the "learner outcomes" are promulgated in an administrative regulation no administrative regulation that uses the outcomes as standards can be approved by this subcommittee; and (4) the "learner outcomes" do not legally exist until they are promulgated in an administrative regulation.

Department personnel stated that the issue of promulgating the "learner outcomes" in an administrative regulation will be discussed by the state board of education at its November meeting.

Senator Kafoglis pointed out that: (1) there are nearly 400 teachers employed in the preschool program; (2) these teachers would have to be recertified pursuant to this administrative regulation; (3) a new standard is being imposed upon people who are already teaching in a preschool program.

Department personnel responded that: (1) some of these teachers would qualify under Level III of the administrative regulation and need no certification; (2) those individuals that are at that level would be asked to demonstrate proficiency in the areas outlined in the administrative regulation; (3) the demonstration of proficiency may not require any more class work at a college or university; (4) teachers may be able to qualify for this new certification through in-service work.

Senator Kafoglis asked what standards would be applied to determine a teacher's proficiency if the teacher is currently teaching in a preschool program.

Department personnel responded that: (1) a proficiency test is being developed to test all teachers in this field; (2) the test is an objective test; designed for use regardless of what college or university the teacher graduated from; (3) certain tasks will have to be demonstrated by a teacher to show proficiency in a given area; (4) the Department will not require duplication of training.

Senator Kafoglis pointed out that: (1) this administrative regulation should not become effective until the actual training requirements are established; and (2) teachers already working in the preschool area should be exempt from retraining.

Representative Kerr pointed out that: (1) this administrative regulation requires a teacher to be politically correct to be certified; and (2) the language in the administrative regulation is not understandable.

Chairman Kerr asked the Department to explain Section 9(2)(b)6. which states that the early childhood educator shall demonstrate his ability to:

"Manipulate antecedent and consequent conditions available in and appropriate to the child's natural environment for the purpose of encouraging appropriate child behavior through nonaversive techniques to foster self-control, self-discipline, and self-responsibility...."

Department personnel responded that: (1) Section 9(2)(b)6. relates to a child that is disruptive; and (2) requires that the teacher demonstrate his ability to modify the teaching environment so that the disruptive child can learn in a positive environment.

Senator Huff asked: (1) for training material used for implementation of this administrative regulation as it relates to early childhood education; and (2) how many other states are implementing this type of administrative regulation.

Department personnel responded that: (1) several sources are available for providing training material on a national level; (2) other states, including North Carolina, are beginning to look at using training material of this type.

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.

Cabinet for Human Resources: Department for Medicaid Services

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

OTHER BUSINESS:

Natural Resources and Environmental Protection Cabinet

Chairman Kerr asked the Department to address the issue of the Governor's authority to designate the type of gasoline to be used under state law without an appropriate public comment period and the promulgation of an administrative regulation, pursuant to KRS Chapter 13A.

Chairman Kerr pointed out that: (1) under federal law the governor has the authority to designate the type of gasoline to be used in Northern Kentucky; but (2) the Governor must operate within the bounds of state law when exercising that authority.

Secretary Shepherd responded that the Governor's decision to use RFG gasoline in Northern Kentucky: (1) has a significant impact on the amount of credit given toward the 15% reduction in Volatile Organic Compounds (VOCs) required by the Clean Air Act; (2) allowed the Cabinet to withdraw the Stage II administrative regulation; and (3) enabled the Cabinet to test vehicles every other year, rather than every year pursuant to 401 KAR 65:010

Secretary Shepherd pointed out that: (1) the decision to "opt in" to the RFG program is delegated to the Governor pursuant to an act of Congress; and (2) the Cabinet will respond by memorandum concerning the Governor's authority to select RFG gasoline under state law.

Mr. Terry McBrayer, counsel for BP America stated that: (1) the Governor should have followed the appropriate administrative process before deciding to use RFG gasoline in Northern Kentucky and Jefferson County; (2) public hearings should have been held before the Governor made his decision; (3) the Governor's selection was null, void and unenforceable; (4) no one has had an opportunity to comment on the Governor's decision to use RFG gasoline in Northern Kentucky; (5) the Natural Resources Cabinet is now talking about holding public hearings but the decision has already been made; (6) Jefferson County has been holding hearings for two (2) years to attempt to come up with the most appropriate way to reduce VOCs pursuant to the Clean Air Act, but the Governor preempted the discussion with his selection of RFG gasoline.

Senator Kafoglis asked who has authority to make the decision. Mr. McBrayer responded that the Governor clearly has the authority to select RFG gasoline, however, the Governor must follow the administrative regulations process to make the decision.

The Subcommittee adjourned at 1 p.m. until December 7, 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 October 27, 1993

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, October 27, 1993, and submits the following report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A:

Department of Agriculture: 302 KAR 37:010
Department of Fish and Wildlife Resources: 301 KAR 1:085, 301 KAR 2:171, 301 KAR 1:200, 301 KAR 2:260 & E, 301 KAR 2:044 & E, 301 KAR 3:030 & E

The meeting adjourned October 27, 1993, at 2:40 p.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of November 4, 1993

The Interim Joint Committee on Education met Thursday, November 4, 1993, and determined that the following administrative regulations complied with statutory requirements:

Department of Education
703 KAR 3:060 - Procedures for Determining Rewards & Sanctions
Education Professional Standards Board
704 KAR 20:005 - Kentucky standards for preparation - certification of professional school personnel program approval
704 KAR 20:585 - Procedures for certification revocation

The committee, with the consent of the executive director of the commission, agreed to amend Section 4.(2) of the following regulation to change April 2, 1992 to April 3, 1992 to comply with statutory regulations.

School Facilities Construction Commission
750 KAR 2:010 - Education Technology Funding Program Guidelines

INTERIM JOINT COMMITTEE ON LABOR AND INDUSTRY
Meeting of November 10, 1993

The Interim Joint Committee on Labor and Industry met on Tuesday and Wednesday, November 9-10, 1993.

The Committee reviewed the following administrative regulation: 803 KAR 25:092, relating to the use of pharmaceuticals in Workers' Compensation. The administrative regulation puts in place a fee schedule applicable to pharmaceuticals covered pursuant to the Workers' Compensation law. The Committee expressed no objections to the administrative regulation.

The Committee adjourned at 3:20 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates F2

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 F11

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 F21

The Subject Index is a general index of regulations published in VOLUME 20 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	20 Ky.R Page No.	Effective Date
302 KAR 20:040E	2596	4-30-93
Expires		9-29-93
302 KAR 20:055E	2600	4-30-93
Expires		9-29-93
302 KAR 20:065E	2602	4-30-93
Expires		9-29-93
302 KAR 20:070E	2604	4-30-93
Expires		9-29-93

ORDINARY REGULATIONS:

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201 KAR 20:235	2755	(See Volume 20)
603 KAR 5:230		
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704 KAR 7:120	2539	(See Volume 20)
704 KAR 20:120		
Amended	2316	6-7-93
707 KAR 1:061	2540	(See Volume 20)
707 KAR 1:160	2541	(See Volume 20)
707 KAR 1:170	2543	(See Volume 20)
707 KAR 1:180	2545	(See Volume 20)
707 KAR 1:190	2551	(See Volume 20)
707 KAR 1:200	2554	(See Volume 20)
707 KAR 1:210	2558	(See Volume 20)
707 KAR 1:220	2561	(See Volume 20)
707 KAR 1:230	2564	(See Volume 20)
707 KAR 1:240	2569	(See Volume 20)
707 KAR 1:250	2572	(See Volume 20)
707 KAR 1:260	2574	(See Volume 20)
803 KAR 2:310		
Amended	2736	(See Volume 20)
805 KAR 7:030		
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902 KAR 8:040	2760	(See Volume 20)
902 KAR 8:050	2761	(See Volume 20)
902 KAR 8:060	2763	(See Volume 20)
902 KAR 8:070	2765	(See Volume 20)
902 KAR 8:080	2768	(See Volume 20)
902 KAR 8:090	2770	(See Volume 20)
902 KAR 8:100	2771	(See Volume 20)
902 KAR 8:110	2773	9-3-93
902 KAR 8:120	2774	(See Volume 20)
902 KAR 8:130	2777	9-3-93
902 KAR 8:140	2778	9-3-93
902 KAR 20:004	659	
Amended	2745	(See Volume 20)
908 KAR 2:070	2779	(See Volume 20)

*Statement of Consideration Not Filed by Deadline; Regulation Expired (KRS 13A.280(2))

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

Regulation Number	20 Ky.R Page No.	Effective Date
2 KAR 2:010E	483	8-12-93
Replaced	668	10-13-93
9 KAR 1:040E	736	9-9-93
11 KAR 3:001E	915	10-4-93
31 KAR 5:020E	736	9-15-93
32 KAR 2:160E	1550	10-22-93
Expires		3-31-93
101 KAR 2:100E	483	8-3-93
101 KAR 3:010E	488	8-3-93
201 KAR 20:240E	1551	10-22-93
301 KAR 2:044E	492	7-30-93
Replaced	596	10-27-93
301 KAR 2:220E	1552	10-27-93
301 KAR 2:260E	494	7-30-93
Replaced	679	10-27-93
301 KAR 3:030E	494	7-30-93
Replaced	952	10-27-93
302 KAR 15:010E	4	5-18-93
Expired	1029	10-29-93
415 KAR 1:115E	495	8-13-93
501 KAR 6:020E	277	6-24-93
501 KAR 6:060E	1557	10-19-93
501 KAR 6:120E	1558	10-19-93
601 KAR 1:040E	1560	10-22-93
601 KAR 1:101E	1562	10-22-93
601 KAR 2:010E	1563	10-22-93
601 KAR 9:040E	1564	10-22-93
601 KAR 11:040E	228	6-16-93
Replaced	145	9-3-93
780 KAR 3:070E	918	9-21-93
780 KAR 6:060E	923	9-21-93
806 KAR 2:120E	8	6-15-93
Replaced	247	9-3-93
806 KAR 2:130E	8	6-15-93
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810 KAR 1:031E	496	7-20-93
902 KAR 8:040E	9	5-19-93
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902 KAR 8:070E	13	5-19-93
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902 KAR 8:080E	15	5-19-93
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902 KAR 8:090E	17	5-19-93
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902 KAR 8:110E	19	5-19-93
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902 KAR 8:120E	19	5-19-93
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902 KAR 8:130E	23	5-19-93
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902 KAR 8:140E	23	5-19-93
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902 KAR 20:004E	24	5-18-93
Replaced	797	10-13-93
902 KAR 55:015E	502	7-20-93
Replaced	659	10-21-93
902 KAR 65:010E	737	9-1-91
903 KAR 5:270E	280	6-16-93
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905 KAR 1:010E	929	9-23-93
905 KAR 2:001E	29	6-7-93
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905 KAR 2:011E	31	6-7-93
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905 KAR 2:090E	31	6-7-93
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907 KAR 1:025E	288	7-7-93
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907 KAR 1:031E	294	7-7-93
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907 KAR 1:044E	504	7-28-93
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907 KAR 1:045E	505	7-28-93
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907 KAR 1:536E	296	7-7-93
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908 KAR 2:060E	506	7-28-93
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2 KAR 1:020		
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2 KAR 2:010	668	10-13-93
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11 KAR 3:001		
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401 KAR 65:010	454	
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402 KAR 2:030	702	
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405 KAR 7:200	1728	
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