AUGUST 1, 1994

ADMINISTRATIVE REGISTER

PART 2

Due to the size of the August 1, 1994, Administrative Register, it could not be stapled as one document. Therefore, this section is a continuation of the August Register.

tion shall be held on August 22, 1994 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Mr. Gary Brunker, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary Brunker
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Does not apply.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements will be created by this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: Is tiering applied? No. Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

DEPARTMENT OF STATE POLICE
(Proposed Amendment)

502 KAR 45:035. Application.

RELATES TO: 1994 Ky. Acts ch. 16 [~~KRS 16.040, 16.050~~]
STATUTORY AUTHORITY: KRS 16.050, 16.080
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such administrative regulations as necessary to assure appointment of qualified officers to the department. This administrative regulation requires applicants to complete a written application form.

Section 1. Applications shall be made on forms prescribed by the commissioner and provided by the department. The application for employment form was adopted May 1, 1994, [~~December 1, 1992,~~] and is hereby incorporated by reference. Application forms may be inspected and copied by contacting the Kentucky State Police Personnel Section, 919 Versailles Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. Failure to submit the application by the specified due date or to comply with all instructions for completion and submission shall disqualify the applicant from further consideration.

JERRY W. LOVITT, Commissioner
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 11, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Mr. Gary Brunker, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

REGULATORY IMPACT ANALYSIS

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(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Department of State Police apart from those costs normally associated with the selection process.
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2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements will be created by this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: Is tiering applied? No. Tiering is not applied in this

regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

DEPARTMENT OF STATE POLICE
(Proposed Amendment)

502 KAR 45:055. Oral interview.

RELATES TO: 1994 Ky. Acts ch. 16 [~~KRS 16.050~~]
STATUTORY AUTHORITY: KRS 16.050
NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This administrative regulation establishes the oral interview component of the examination.

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

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

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

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

(2) Each applicant interviewed shall be scored in each of five (5) [~~six (6)~~] categories by each panel member. The categories shall be:

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

For each category, the applicant shall be scored on a range from zero to six (6) [~~five (5)~~], with six (6) [~~five (5)~~] being the highest score and zero being the lowest score.

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

JERRY W. LOVITT, Commissioner
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 11, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Mr. Gary Brunker, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

REGULATORY IMPACT ANALYSIS

Contact Person: Gary Brunker
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(b) Reporting and paperwork requirements: No additional reporting and paperwork requirements will be created by this regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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:
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(6) Any additional information or comments: None
TIERING: Is tiering applied? No. Tiering is not applied in this regulation. The only regulated entities are persons who apply for employment as cadet troopers, and this regulation does not have a disproportionate impact on classes of persons. All must be treated equally.

DEPARTMENT OF STATE POLICE
(Proposed Amendment)

502 KAR 45:065. Background investigation.

RELATES TO: 1994 Ky. Acts ch. 16 [~~KRS 16.040, 16.050~~]
STATUTORY AUTHORITY: KRS 16.050, 16.080
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 direct the Commissioner of the Department of State Police and the State Police Personnel Board to assure the fitness of candidates for employment.

This administrative regulation establishes a background investigation as a component of the selection process.

Section 1. Applicants who have completed the written examination and the oral interview and who have requested to remain in the selection process shall be required to submit to a background investigation which may include a polygraph examination.

Section 2. Background investigations shall be conducted by individuals selected by the commissioner. Applicants who have lived in another state shall be investigated by an appropriate law enforcement agency in that state, at the request of the commissioner. Applicants shall not be considered for employment until the background investigation is completed. Reports of all background investigations shall remain confidential and shall be filed in headquarters.

Section 3. Background investigators may discontinue an investigation and recommend disqualification or deferral when the investigation reveals facts or circumstances which constitute grounds for disqualification or deferral.

Section 4. Background investigators may express opinions about the suitability of applicants for employment, but their opinions shall be expressed in writing and supported by specific factual reasons. The commissioner may give such weight to an opinion by an investigator as he deems appropriate.

Section 5. All reports of background investigations shall be confidential. Information obtained as a result of a background investigation shall not be disseminated. Reports of background investigations shall be filed at Kentucky State Police Headquarters in a secure file to which only the commissioner or persons specifically designated by the commissioner shall have access.

JERRY W. LOVITT, Commissioner
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 11, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Mr. Gary Brunker, Personnel Manager, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601, (502) 695-6300.

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(6) Any additional information or comments: None
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WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:020. General provisions for operation of the Department of Vocational Rehabilitation.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A)
STATUTORY AUTHORITY: KRS 151B.185, 151B.195
NECESSITY AND FUNCTION: KRS 151B.200 accepts and agrees to comply with federal vocational rehabilitation acts, provides for a state rehabilitation agency and sets eligibility criteria for vocational rehabilitation services. KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate regulations governing services, personnel, and administration of the state rehabilitation agency. This administrative regulation prescribes general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for that [~~such~~] purpose. The general criteria in this administrative regulation set forth [~~covers~~] the regulatory policies.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.
(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.
(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.
(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.
(5) "Relative" means an individual related to another individual by blood, marriage, or adoption, including spouses, parents, grandparents, brothers, sisters, sons, daughters, grandchildren, aunts, uncles, nieces, nephews and first cousins.

(6) "Visual impairment" means an individual has a condition of the eye which constitutes or results for the individual in a substantial impediment to employment, as defined by KRS Chapter 163.

(7) "Legally blind" means an individual has a visual acuity of 20/200 or less in the better eye with correction or a visual field of twenty (20) degrees or less, as defined by KRS Chapter 163.

(8) "Occupational equipment" means equipment essential to perform the job duties at the job site and required as a condition of employment.

Section 2. Comparable Benefits. Except as provided in this section, the agency shall fully consider any comparable benefits available under any other program to an individual or to members of that individual's family, to meet, in whole or in part, the cost of vocational rehabilitation services.

(1) Services for which consideration of comparable benefits shall not be required include:

(a) Assessment for determining employability and vocational rehabilitation needs [~~Evaluation of rehabilitation potential~~];

(b) Counseling, guidance and work-related replacement services [~~referral~~];

(c) Vocational and other training services including personal and vocational adjustment training, books, [~~tools,~~] and other training services [~~materials~~] that are not provided in institutions of higher education;

(d) [~~Placement;~~

~~(e)~~] Rehabilitation technology [~~engineering services~~];

(e) [~~(f)~~] Services listed in paragraphs (a) through (d) [~~(e)~~] of this subsection when provided as postemployment services.

(2) Consideration of comparable benefits shall not be required if that [~~such~~] consideration would place the applicant or client at extreme medical risk or prior to the provision of [~~such~~] services if an immediate job placement would be lost due to a delay in the provision of such comparable benefits. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriate licensed medical professional.

(3) The agency shall not supplant a service that is covered by Medicaid, Medicare, private insurance or any other health services programs. If a vendor of medical services refuses to accept a client's public or private medical coverage for any services covered [~~under such programs~~], referral and assistance shall be provided by the agency in locating and securing the needed medical services through vendors who will accept the client's medical coverage.

(4) The application for and use of comparable benefits shall be used if available at any time during the period that the individual is receiving agency services.

(5) If the individual refuses to apply for or to accept comparable benefits, the agency shall not provide the service using agency funds.

Section 3. Confidentiality. (1) The Department of Vocational Rehabilitation shall safeguard the confidentiality of all personal information, including photographs and lists of names to assure that:

(a) Specific safeguards protect current and stored personal information;

(b) All applicants, clients, representatives of applicants or clients, and as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and, upon request, the conditions for accessing and releasing this information;

(c) All applicants and clients or their representatives shall be informed about the department's need to collect personal information and policies governing its use including as appropriate:

1. Identification of the authority under which information is collected;

2. Explanation of the principal purposes for which the department intends to use or release the information;

3. Explanation of whether provisions of the information by the individuals is mandatory or voluntary and the effects of not providing requested information to the department;

4. Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

5. Identification of other agencies to which information is routinely released.

(d) Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about state policies and procedures affecting information through methods they can adequately understand.

(2) All personal information in the possession of the department shall be used only for purposes directly connected with the administration of the vocational rehabilitation program. Identifiable personal information shall not be shared with advisory or other bodies which do not have official responsibility for administration of the program. In the administration of the program the department may obtain personal information from service providers and cooperating agencies under assurances that the information shall not be further divulged, except as otherwise provided under this section.

(3) The department may release information to involved individuals under the following conditions:

(a) When requested in writing by the involved individual or the individual's representative, the department shall make all information in the case record accessible to the individual or release it through a representative in a timely manner. Medical, psychological, or other information which the department believes may be harmful to the individual shall not be released directly to the individual, but shall be provided through a representative, a physician or a licensed or certified psychologist;

(b) When personal information has been obtained from another agency or organization, it may be released only by or under the conditions established by the other agency or organization.

(c) A written request from an applicant or client to a member of the congressional delegation requesting assistance or intercession with regard to vocational rehabilitation services shall be construed by the agency to fulfill the requirements of this section.

(4) Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency, or individual assures that:

(a) The information shall be used only for the purposes for which it is being provided;

(b) The information shall be released only to persons officially connected with the audit, evaluation or research;

(c) The information shall not be released to the involved individual;

(d) The information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the involved applicant or client or a representative.

(5) Information may be released to other programs or authorities under the following conditions:

(a) Upon receiving the informed written consent of the individual, the department may release to another agency or organization for its program purposes only, that personal information which may be released to the involved individual under subsection (3) of this section, and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program. Medical or psychological information which the department believes may be harmful to the individual may be released when the other agency or organization assures the department that the information shall be used only for the purpose for which it is being provided and shall not be further released to the involved individual;

(b) The department may release personal information if required by federal law;

(c) The department may release personal information in response to investigations in connection with law enforcement, fraud, abuse (except where expressly prohibited by federal or state laws or regulations), and in response to judicial order; and

(d) The department may also release personal information in order to protect the individual or others when the health or safety of the individual or others is threatened.

Section . 4. Extended [~~Employability~~] Evaluation. Substantial physical restoration services (e.g., surgery or physical therapy) shall not be provided in employability evaluation. Major or extensive restoration services shall not be provided to determine if the applicant may benefit in terms of an employment outcome [~~meets the reasonable expectation criteria of eligibility~~].

Section 5. Employees' Application for Services. (1) In order to provide agency employees fair and equal access to agency services and to avoid the appearance of impropriety or conflict of interest, an applicant who is an agency employee and the agency shall adhere to the following procedures when such an employee wishes to apply for rehabilitation services:

(a) The employee shall advise the regional administrator of the intent to apply.

(b) The regional administrator shall select a counselor to take the application. Whenever practicable, the counselor shall be located in an adjacent district.

(2) The employee shall be informed of eligibility or ineligibility for services.

(3) Any employee-applicant who is dissatisfied with any action or inaction may appeal pursuant to 781 KAR 1:010.

Section 6. Employees' Relatives' Applications for Services. An employee shall not take an application or provide vocational rehabilitation services to a relative. The relative shall be referred to the branch manager. The branch manager shall assign a staff member who is not a relative to take the application and to provide services as deemed appropriate.

Section 7. Hearing Impairments. (1) All applicants or clients with a diagnosis of hearing impairment or deafness and determined to be severely disabled shall be provided with a visual evaluation by a physician skilled in diseases of the eye or by an optometrist.

(2) An audiological evaluation shall be used to document hearing impairment or deafness.

(3) An ear, nose and throat (ENT) specialist evaluation of the auditory system shall be provided when symptoms of ear pathology or conductive hearing loss are present.

Section 8. Legal Fees. The agency shall not be responsible for any fees incurred by an applicant or client for legal services.

Section 9. Maintenance. The agency shall not subsidize a client's home.

Section 10. Payment Rates for Purchased Services. (1) The department shall maintain, in accessible form, information on current rates of payment for services provided by the agency. A written record of the effective date of adoption of fee schedules or rates of payment shall be maintained.

(2) The department shall ensure that physicians or other vendors of services agree not to charge or accept from the applicant or client or a family member any payment for services unless the amount of such charge or payment is previously known to and, where applicable, approved by the agency.

(3) The establishment, maintenance, and revision of fee schedules and rates of payment for services shall be guided by: review of existing Medicaid, Medicare, or private health care insurance fee schedules; review and consultation with other state rehabilitation agencies; review and consultation with Veteran's Administration or other federal agencies that maintain rate schedules; or consultation with physicians and other vendors of services. Consultation for the purpose of establishing rates of payment may be secured on a fee for service basis.

(4) The rates of payment shall not exceed the maximum established by the agency. A lesser rate may be negotiated between the agency and [~~with~~] the service provider.

(5) The agency shall not approve payment for services provided to an individual when the agency has made no prior authorization.

Section 11. Physical or Mental Restoration. Physical or mental restoration services shall be authorized to out-of-state vendors only as follows:

(1) In geographical areas routinely used for the convenience of the individual; or

(2) When it will be economically beneficial to the agency; or

(3) If a particular procedure or mode of treatment is not available in state. In this case, the schedule of payment shall be governed by the rates established by the vocational rehabilitation agency in the state where services are to be provided.

Section 12. Placement. The commissioner may arrange [~~agency shall not pay~~] for job placement services from a private for profit employment or placement agency in accordance with the informed choice of the individual.

Section 13. Postemployment Services. (1) The expenses of treating acute conditions during postemployment services shall not be borne by the agency.

(2) Postemployment services shall not be provided solely to upgrade a client's financial status.

(3) Support services such as maintenance, transportation, and personal assistance [~~attendant care~~] shall be provided only in conjunction with other rehabilitation services and shall not be provided solely to support an individual in employment.

(4) If postemployment services are initiated and it becomes obvious that the client cannot or will not remain in or return to employment, the case shall be terminated. The case shall not be reopened for postemployment services.

Section 14. Potentially Terminal Illness. (1) Services shall not be provided to individuals with a potentially terminal illness unless:

(a) There is a favorable medical prognosis for recovery; or

(b) There is a prospect of survival for a reasonable period of time, allowing a return to work for at least twelve (12) months (work life expectancy).

(2) The following guidelines shall be followed in making a determination:

(a) If surgery or ancillary medical services, such as chemotherapy or nuclear medical treatment is expected to cure the condition, then these services may be provided as if it were any other medical problem.

(b) If the attending physician feels the prognosis is guarded, the agency staff shall request a letter indicating the client's work life expectancy. For those individuals with a twelve (12) month work life expectancy, services may be served [~~considered~~].

Section 15. Prescription Drugs. Current Medicaid rates shall be used to establish payment for prescribed drugs.

Section 16. Second Opinions. The agency may seek a second opinion from a qualified practitioner before determining the eligibility of an applicant or before authorizing services for a client.

Section 17. Self-employment Enterprises. (1) The following shall be met prior to planning for self-employment for clients of the agency:

(a) Clients shall agree to undergo appropriate assessment [~~evaluation~~] to determine work potential, including mental and physical abilities, and interests, abilities, aptitudes, personality traits and other pertinent characteristics.

(b) There shall be evidence that the client is expected to have approximately five (5) years of work expectancy.

(c) Clients shall demonstrate that they can work with minimal or no supervision.

(d) The agency may require clients to undergo prevocational training, as needed, to gain skills and knowledge and to complete small business training.

(e) Clients shall obtain the required licenses, permits, certificates, leases, and in all instances be in conformity with all federal and state laws, and local ordinances in order to commence an enterprise.

(f) The agency may review recordkeeping systems prior to the establishment of the business and periodically thereafter until the case is closed or until liens on any agency purchased equipment expire.

(2) The Director of Program [~~Field~~] Services or a designee may approve proposed self-employment enterprises requiring expenditures in excess of $5,000 through review of the following:

(a) Impact on total agency goals:

1. Fiscal considerations;
2. Applicability of statewideness; and
3. Numerical requirements necessary to demonstrate maintenance of effort and program integrity.

(b) Anticipated cost/benefit ratio and return on investment. Savings derived through increased taxes paid, cessation of benefits, etc., should equal agency expenditure within five (5) years.

(c) Potential for recovery of expenditures from other sources (e.g., Social Security Administration, Workers' Compensation).

Section 18. Sex Change. Agency funds shall not be used to pay for sex change surgery.

Section 19. Extended [~~Sheltered~~] Employment. In addition to the federal requirements for a successful closure, a sheltered employee shall maintain suitable employment for the required sixty (60) days at a minimum of twenty-five (25) percent production of a nondisabled worker.

Section 20. Supported Employment. Supported employment services exceeding $3500 per client served in individual placements and $1750 per client served in group placements shall require approval of the Director of Program [~~Support~~] Services or a designee.

Section 21. Tools and Equipment. The agency may recover tools, equipment, and supplies if the client ceases to use the equipment for the pursuit and practice intended or upon the death of the client.

Section 22. Training. (1) Postsecondary training may be provided for clients pursuant to this section.

(a) Tuition and initial registration fees provided to the training institution of the client's choice shall not exceed those of the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation. The Director of Program [~~Field~~] Services or a designee may make exceptions only when it is clearly demonstrated that such exceptions are financially advantageous to the agency, or are otherwise in the best interests of the agency's achievement of stated goals.

(b) The agency may provide tuition and initial registration fees for postsecondary programs for the deaf recognized by the U.S. Congress as national programs due to the provision of essential support services (e.g., interpreting services, note-taking services, tutoring services).

(c) Other agency approved postsecondary programs for the deaf offering interpreting services, note-taking services, and tutoring services may be utilized for clients who are deaf if the total cost of attendance does not exceed the total cost of provision of tuition, fees and interpreting services, note-taking services, and tutoring services at the highest rate charged by a state-supported institution in Kentucky that offers similar vocational preparation.

(d) Institutional training shall be purchased only from those schools that are accredited or licensed by appropriate accrediting or licensing bodies and which comply with all state and federal requirements applicable to their use by the agency.

(e) Training shall be provided only to the entrance level of the vocational objective.

(f) Clients planning to attend a postsecondary institution in Kentucky shall file the Kentucky Financial Aid Form and other need analysis forms as required by the school.

(g) Agency sponsored clients shall maintain full-time student status, as that status is described by the school attended. An exception may be made only in cases where such exception is essential to the achievement of an individual's vocational objective.

(h) Clients shall maintain a "C" average. The agency may continue funding a client for one (1) additional term when this requirement is not met. The agency may require a higher grade point average if such is necessary for satisfactory achievement of the vocational objective.

(i) Termination of agency sponsorship for training shall result in cessation of all support services related to training, e.g., interpreter services, note-taking, personal assistance [~~attendant care~~], maintenance, and transportation.

(j) The client shall furnish the counselor with a grade transcript for each semester or quarter.

(k) Cost of personal assistance [~~attendant~~] services for clients in training shall not exceed the cost of personal assistance [~~attendant~~] services in the agency sponsored attendant care program at the University of Kentucky.

(2) On-the-job training may be provided pursuant to this subsection.

(a) On-the-job training for unskilled and semiskilled labor positions shall not exceed three (3) months in duration, exceptions shall require approval of the Director of Program Services or a designee.

(b) On-the-job training for skilled occupations shall not exceed six (6) months in duration, exceptions shall require approval of the Director of Program Services or a designee.

(c) The vendor or employer shall have made a written commitment to hire the client-trainee upon successful completion of the on-the-job training.

(d) The client in on-the-job training shall be paid at least the legal minimum wage for occupations covered by such statute or the prevailing rate for occupations not covered.

(e) The client in on-the-job training shall receive the compensation coverage, privileges, and other benefits that accrue to other employees.

(f) The agency shall not pay in excess of the legal minimum wage for occupations covered by statute or the prevailing rate for occupations not covered.

(3) Correspondence training may be provided to clients subject to the provision of this subsection.

(a) Correspondence training may be provided only if it is the best available method by which the client can receive the necessary training.

(b) The agency shall not sponsor correspondence courses in subjects such as heavy equipment operation, truck driving, depot agent, detective, or airline employee if practical experience is not provided.

(4) Training outside the contiguous United States may be provided to clients pursuant to this subsection.

(a) Training institutions located outside the contiguous United

States shall be considered only if all of the following conditions are met:

1. The client is enrolled in a program in the contiguous United States that requires study abroad to satisfy degree requirements for graduation;

2. The study abroad does not lengthen the total program;

3. The client maintains full-time student status while studying abroad;

4. The client is in good academic standing; and

5. The client's successful achievement of the vocational goal is contingent on participation in the study abroad as a part of the approved curriculum.

(b) If the preceding conditions are met, the agency may provide financial assistance only up to the amount normally authorized for in-state training, excluding transportation costs.

Section 23. Transplants or Implants. Transplant or implant procedures which are experimental or which do not have a consistent record of significant improvement in vocational functioning in better than fifty (50) percent of the subjects shall not be provided by the agency.

Section 24. Vehicle Purchase. The agency shall not purchase vehicles except when the occupation of the client will require a vehicle as occupational equipment.

Section 25. Visual Impairments. (1) Pursuant to KRS Chapter 163, individuals with a reported or diagnosed primary disability of visual impairment shall not be served by the department.

(2) Clients with a secondary disability of visual impairment may be served only if another impairment, other than visual, poses the more substantial impediment to employment. The agency shall secure, in all cases of visual impairment, an evaluation of visual loss provided by a physician skilled in the diseases of the eye or by an optometrist.

(3) The agency shall secure, in all cases of blindness, a screening for hearing loss from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws or regulations.

(4) Individuals with deaf-blindness shall be served by the agency that can most appropriately meet the specific and individual needs of the applicant or client who is deaf-blind.

SAM SERRAGLIO, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: July 6, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1994 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boulevard, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency by August 24, 1994, 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: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521. The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Parsons

(1) Type and number of entities affected: Applicants and clients of the Department of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect cost or savings.

1. First Year: None

2. Continuing costs for savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or 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: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.

TIERING: Was tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details agency standards for the general administration of the Department of Vocational Rehabilitation.

3. Minimum or uniform standards contained in federal mandate. The federal mandate requires states to adopt policies and procedures necessary for the administration of the program.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. This regulation prescribes

general criteria for the provision of rehabilitation services and is necessary in order to distribute limited funds available for such purpose.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

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

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), 20 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b)

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation sets forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients. Federal guidelines for imposition of an order of selection necessitate state policies and practices as a condition for continuation of federal funding. KRS Chapter 13A requires that those policies and practices be promulgated as administrative regulations.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that is not readily amenable to - or likely to be corrected through - surgical intervention or medical treatment. Use of the term permanent functional limitation in the agency's order of selection seeks to differentiate between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical or medical intervention.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Individual with the most severe disabilities" means an individual who has a severe disability and who requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability.

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) ~~[Telecommunications, sensory, and other technological aids and devices;~~

~~(g)~~] Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(g) [~~(h)~~] Postemployment services except as provided in subsection (2)(a) through (k) of this section;

(h) [~~(i)~~] Tuition and initial registration fees for training beyond the baccalaureate level;

~~[(j) Interpreter services for individuals who are deaf except as provided in subsection (2)(f) of this section;~~

~~(k) Reader services for individuals who are blind;~~

~~(l) Rehabilitation technology except as provided in subsection (2)(c) and (f) of this section; and~~]

(i) [~~(m)~~] Other goods and services which can reasonably be expected to benefit an eligible individual in terms of an employment outcome.

(j) Vehicle and property modifications in excess of $6,000.

(2) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational [~~Diagnosis and evaluation of~~] rehabilitation needs [~~potential~~];

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) [~~Professional~~] Rehabilitation technology [~~engineering services~~];

(f) ~~[Rehabilitation engineering devices necessary for assessment of rehabilitation potential;~~

~~(g)~~] Communication assistance in the individual's native language; ~~[, including interpreters for individuals who are deaf for purposes of providing services set forth in paragraph (a), (b), (c), (d) or (e) of this subsection.]~~

(g) [~~(h)~~] Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

~~[(i) Adjustment training, driver training, on the job training; and]~~

(h) [~~(j)~~] Supported employment; ~~[job coaching.]~~

(i) Interpreter services for the deaf;

(j) Reader services for the blind;

(k) Personal assistance services;

(l) Tutors, note-takers, and assistive technology educational aides; and

(m) Other training, including driver training, on-the-job training, job coaching, job development and training.

(3) Except as provided in 781 KAR 1:060, clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess household income to their rehabilitation program.

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test in figuring the excess monthly household income.

Section 3. Order of Selection. When the commissioner determines that the agency shall be unable to provide services to all eligible applicants, the agency shall implement the order of selection.

(1) A client previously declared eligible for vocational rehabilitation services shall not be affected when the agency implements an order of selection.

(2) The order of selection shall not regulate the provision of information and referral, [~~be applicable for clients whose needs are for nonpurchased services only (~~]counseling, guidance, [~~placement, referral services,~~] coordination of comparable benefits, [~~or~~] third party payments, or job development and job placement to otherwise eligible individuals[)].

(3) ~~[The order of selection shall not be applicable for clients whose needs are for services at agency owned and operated~~

~~rehabilitation facilities or for services at contracted private not for profit rehabilitation facilities.~~

~~(4)~~] On implementation of the order of selection, the agency shall continue to accept referrals of and applications from individuals with disabilities.

(4) [~~(5)~~] The order of selection shall not regulate the provision or authorization of assessment for determining eligibility [~~diagnostic and evaluation services~~].

(5) [~~(6)~~] All applicants shall be declared eligible or ineligible as appropriate [~~on a timely basis~~].

(6) [~~(7)~~] Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(7) [~~(8)~~] The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

(8) [~~(9)~~] If the agency is unable to provide services to all eligible individuals [~~clients~~] with severe disabilities, eligible individuals with the most severe disabilities shall be served. If the department is unable to serve all eligible individuals [~~identify clients~~] with [~~the most~~] severe disabilities, eligible individuals [~~clients~~] with severe disabilities shall be served on a first-applied, first-served basis established by date of application.

[~~(10) Clients with nonsevere disabilities who are receiving nonpurchased services and who, due to unanticipated events, need purchased services, shall receive the necessary purchased services.~~]

(9) [~~(11)~~] The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(10) [~~(12)~~] The order of selection system shall have six (6) priority categories as follows:

(a) Priority I - eligible individuals with the most severe disabilities.

(b) Priority Category II - eligible individuals with a severe disability.

(c) Priority Category III - eligible public safety officers with a nonsevere disability sustained in the line of duty.

(d) Priority Category IV - eligible individuals with a nonsevere disability that results in permanent functional limitations and who are served as part of a cooperative funding agreement.

(e) Priority Category V - eligible individuals with a nonsevere disability that results in permanent functional limitations.

(f) Priority Category VI - all other eligible individuals whose disability is nonsevere.

SAM SERRAGLIO, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: July 6, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1994 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boulevard, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency by August 24, 1994, 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: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521. The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Parsons

(1) Type and number of entities affected: All applicants and clients of the Department of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There are no identifiable cost savings. Any savings realized would be redistributed in the form of services to a larger population of citizens with disabilities.

1. First Year: None

2. Continuing costs for savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First Year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork requirement other than that need to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation, or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.

TIERING: Was tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details the agency standards for an economic needs test and an order of selection for vocational rehabilitation services.

3. Minimum or uniform standards contained in federal mandate.

The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is required when sufficient funds are not available to serve all eligible individuals.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. The Department of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve individuals with severe disabilities.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 USC 706(8)(A), 34 CFR 361.31(b)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This regulation prescribes when, and under what conditions, rehabilitation technology [~~engineering~~] services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

Section 2. Computer Hardware and Software. The Department of Vocational Rehabilitation shall not purchase computers, microcomputers, other hardware or software for the personal use of applicants or clients. The agency may consider the provision or upgrade of computer hardware and software when:

(1) The equipment is essential to compensate for the limitations caused by the disability;

(2) The equipment is required for the client to achieve a vocational objective of competitive employment;

(3) [~~There are no comparable benefits available to acquire the hardware or software necessary to accomplish the vocational objective; and~~

~~(4)~~] In addition, one (1) or more of the following criteria shall be met:

(a) The equipment is required for vocational preparation;

(b) The equipment is required by the job and no provision is made by the employer to supply the equipment; or

(c) The equipment will enable a client to become competitive with nondisabled employees performing the same duties.

Section 3. Vehicle Modification (General). (1) Modification of a van for a client who can be functional in an automobile shall be authorized only to the maximum cost of the automobile modification.

(2) The agency may provide van modifications for clients determined by the agency specialist of the Driver Evaluation/Vehicle Modification Program to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications shall be provided only on the recommendation of the agency specialist of the Driver Evaluation/Vehicle Modification Program.

(4) Individuals who are not clients of the agency in need of drive evaluation, driver training or vehicle modification may purchase evaluation services on a fee for service basis when all agency applicants and clients have been served.

(5) Vehicle modification shall be provided only after the client completes a driver evaluation and vehicle modification assessment by an agency specialist of the Driver Evaluation/Vehicle Modification Program.

(6) Vehicle modifications shall be inspected and approved by an agency specialist from the Driver Evaluation/Vehicle Modification Program before payment is made.

Section 4. Specific Modifications Costing Less than $1,000. Agency staff may approve modifications to a vehicle when the following conditions apply:

(1) Modifications is simple and is not related to overall vehicle engine or body condition;

(2) Modification is not of a substantial structural nature; and

(3) Maintenance records and overall condition of the vehicle can justify modification.

Section 5. Specific Vehicle Modifications Costing More Than $1,000. (1) Except as provided in subsection (2) of this section, vehicle modifications costing in excess of $1,000 shall be provided only for clients whose vocational objective is competitive employment and who are within one (1) year of job placement.

(2) Vehicle modifications may be provided to individuals who are not within one (1) year of job placement if the division director of program services determines that documentation exists that the modification would result in a substantial cost savings to the department.

(3) Vehicle modifications costing in excess of $1,000 shall only be provided on new vehicles except as provided in this section.

(4) The agency may approve vehicle modifications for older vehicles in excess of $1,000 when maintenance records and overall condition of the vehicle can justify the modification as attested by an agency specialist of the Driver Evaluation/Vehicle Modification Program. The modification must demonstrate cost savings to the agency.

Section 6. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for a client when such upgrades are needed for obtaining or maintaining employment.

(2) Upgrading and repair of vehicle modification in excess of $1,000 shall require the approval of the Director of Program [~~Field~~] Services or a designee.

Section 7. Second Time Modifications. (1) Except as provided in this section, the agency shall provide only one (1) vehicle modification per client.

(2) The agency may approve a second time vehicle modification under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history;

(b) The client's employer attests that the modification is needed to maintain employment.

Section 8. Vehicle Repair. (1) The agency shall not provide repair to vehicles.

(2) The agency shall not provide or repair any standard or optional automatic equipment. Equipment includes but is not limited to: power steering, power brakes, automatic transmission, air conditioning, tilt steering, etc.

Section 9. Property Modification. (1) Permanent, nonrecoverable modification to private homes, businesses or property is an allowable expenditure if necessary to effect vocational rehabilitation of the individual. The individual shall meet economic need qualifications. The counselor shall make every attempt to utilize recoverable, nonpermanent modifications if possible or cost effective.

(2) The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including but not limited to the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.

(3) Except as provided in this section, property modifications in excess of $6,000 shall not be allowed.

(4) Property modifications in excess of $6,000 may be provided if the division director of program services determines that documentation exists that the modification would result in a substantial cost savings to the department.

SAM SERRAGLIO, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: July 6, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1994 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boulevard, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency by August 24, 1994, 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: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521. The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Parsons

(1) Type and number of entities affected: Applicants and clients of the Department of Vocational Rehabilitation who are in need of driver evaluation or vehicle modification and individuals who may want to purchase driver evaluations.

(a) Direct and indirect costs or savings to those affected: There are no identifiable cost savings.

1. First Year: None

2. Continuing costs for savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First Year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no additional paperwork requirement other than that need to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation, or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.

TIERING: Was tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details the agency standards for providing rehabilitation technology to eligible individuals.

3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to restrict access to services based on acceptable policy.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. Rehabilitation technology is heavily emphasized in the 1992 amendments to the Rehabilitation Act. Technology is available to assist individuals with severe disabilities to achieve suitable employment outcomes. This regulation establishes guidelines for the provision of services that are not addressed in the Act.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:050. Carl D. Perkins Comprehensive Rehabilitation Center.

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), 29 USC 706(8)(A)
STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b)
NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This regulation establishes the criteria for admission to and discharges from the Carl D. Perkins Comprehensive Rehabilitation Center.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Director" means Division Director of the Carl D. Perkins Comprehensive Rehabilitation Center.

(4) "Discharge" means that no further services shall be provided to an applicant or client. The applicant or client shall be transported to the home area and the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall no longer charge per diem against the case.

(5) "Expulsion" means that the applicant or client has been dismissed from CDPCRC pursuant to Section 5 of this regulation.

(6) "Suspension" means that the applicant or client shall not receive CDPCRC services for a period of time not to exceed twenty (20) class days, and that the applicant or client shall be transported to the home area; but the applicant or client shall remain enrolled in the program. A per diem shall be charged against the case, and services may resume as soon as the suspension ends.

(7) "Excused absence" means any absence due to personal illness, injury, or accident; serious illness of family members; death of spouse, brother or sister, children including stepchildren, foster children, parents or spouse's parents, or grandparents or spouse's grandparents; requirements to appear in court; military assignments; and other compelling circumstances making it unwise or inadvisable to attend class. In the event of illness, a student may be requested to present a medical statement. Regardless of whether a student believes an absence(s) to be excused or unexcused, the student shall notify the counselor and/or teacher or an appropriate administrator of the absence(s) and the reason therefore, either prior to the absence(s) or as soon thereafter as practical.

(8) "Unexcused absence" means any absence that does not meet the definition of excused absence as described.

(9) "Unexcused tardy" means that an applicant or client is late for class and does not have a note describing the reason from counseling, medical or other professional staff.

Section 2. Admissions Policy. (1) Individuals admitted to CDPCRC shall meet one (1) of the following conditions:

(a) The individual is an applicant of the Department of Vocational Rehabilitation for whom an assessment [~~evaluation~~] is needed prior to making an eligibility or ineligibility decision.

(b) The individual is a client of the Department of Vocational Rehabilitation who requires services of the type provided by CDPCRC, in order to benefit in terms of an employment outcome [~~employability~~].

(c) The individual is an applicant or client of other agencies which have agreed to reimburse CDPCRC for the cost of services provided.

(2) All prospects for admission shall submit an application for CDPCRC services, including the following:

(a) A consent for CDPCRC to provide emergency medical care. In the case of minors, and persons who have been adjudged legally disabled, the applicant's or client's parent or guardian, as appropriate, shall give the permission, subject to the limitations of KRS 387.660(3).

(b) An agreement by the applicant or client or others to assume responsibility for living arrangements, in the event that the applicant or client is later discharged from CDPCRC. In the case of minors and persons who have been adjudged legally disabled, the parent or guardian, as appropriate, shall agree to assume responsibility for living arrangements.

(c) A description of any limitations that the applicant or client may have in performing activities of daily living.

(3) No applicant or client shall be admitted to any CDPCRC program if there is evidence that a medical or behavioral condition represents a direct threat [~~risk~~] to the health or safety of self or others. The determination of whether such a condition exists shall be made by a written opinion from a CDPCRC professional skilled in the area in question, based upon documentation submitted at referral, and any other information the professional shall gather as needed.

(4) When it is determined that the documentation submitted indicates the possibility that the applicant's or client's medical or behavioral condition represents a direct threat [~~risk~~] to self or others, the CDPCRC admissions counselor shall select a CDPCRC professional with expertise in the area that is likely to be a problem, and shall submit the documentation to that professional for an opinion.

(5) When the admissions counselor has requested an opinion from a CDPCRC professional, the decision of such professional shall determine whether the applicant or client shall be admitted to CDPCRC. No such decision shall stand for more than a single referral and if the applicant or client is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall at the time that the applicant or client is accepted for CDPCRC services for evaluation or treatment and training, establish a list of recommended services for the applicant or client and make a referral to the appropriate service area.

(7) When a decision is made to accept an applicant or client for admission, the applicant or client shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources.

(8) When a decision is made not to admit the applicant or client to CDPCRC the referral source shall be notified in writing of the decision giving justification for that decision. The applicant or client shall be notified of the decision and informed of the availability of the Client Assistance Program and the right to an administrative review or fair hearing.

(9) Applicants or clients who are dissatisfied with admissions decisions may request an administrative review of the decision pursuant to ~~706~~ 781 KAR 1:100.

Section 3. Retention Policy. The decision to provide further services after an applicant or client has completed a CDPCRC program shall be based upon the following:

(1) Further programs are requested by the referral source, or any CDPCRC professional believes that the applicant or client requires further services; and

(2) The program requested for the applicant or client is available.

Section 4. Discharge Policy. (1) Voluntary discharge from the CDPCRC may be for the following reasons:

(a) The individual has completed a program of services, and is not qualified for another CDPCRC program;

(b) The individual does not desire further services from CDPCRC;

(c) The individual's medical condition requires treatment away from the CDPCRC for an extended period of time; or

(d) The individual wishes to leave CDPCRC and cannot be convinced to stay.

(2) An applicant or client may be involuntarily discharged from CDPCRC for the following reasons:

(a) The individual fails to make progress in the program of services and efforts to resolve the problem have been unsuccessful;

(b) The individual is no longer qualified for the program and no other needed program is available;

(c) The individual's behavioral condition deteriorates to the point of direct threat [~~risk~~] to the safety of others;

(d) The individual has been unexcused, absent from class or tardy more than five (5) days in a three (3) month training program or more than ten (10) days in a training program exceeding three (3) months duration;

(e) The individual is expelled for cause.

(3) When a decision is made to discharge an applicant or client for failure to make progress for medical, psychological, behavioral, or personal reasons, these procedures shall be followed:

(a) The decision to discharge from a particular program shall be made by the program manager, with documentation and participation by staff within the department. Discharge from a particular program does not necessarily imply discharge from the facility.

(b) Should the reason for discharge necessitate services outside the facility (e.g., medical, psychological), the applicant or client may be readmitted when the problem is resolved.

(4) The applicant or client may be discharged from CDPCRC without prior notice if necessary to prevent harm to persons or property, or to prevent serious disruption of CDPCRC programs.

Section 5. Suspension and Expulsion Policy. The director or a designee may suspend or expel applicants or clients from CDPCRC when it has been determined that the applicant's or client's behavior has upset the order of the institution, or has endangered the safety of others, or indicates that the applicant or client is persistently unwilling to comply with the lawful regulations for the governance of CDPCRC.

(1) Suspension.

(a) An applicant or client may be suspended or expelled for any of the following specific reasons:

1. Physical abuse of another person;

2. The threat or use of violence;

3. The possession or use of alcohol, a controlled substance, or being under the influence of alcohol or a controlled substance on CDPCRC grounds, or at a CDPCRC-sponsored activity;

4. Stealing, destruction of, or defacing of CDPCRC or private property;

5. The carrying or use of weapons;

6. Documented, persistent refusal to participate in a planned program of services; or

7. Flagrant violations of CDPCRC regulations that upset the order of the institution.

(b) Suspension shall mean a dismissal from CDPCRC for a period not to exceed twenty (20) class days.

(c) An applicant or client shall not be suspended until after the following due process procedures have been followed:

1. The applicant or client, or the parent or guardian if under eighteen (18) years of age or legally disabled, and the referring counselor, shall be given oral or written explanation of the charges against the applicant or client;

2. The applicant or client shall be given an explanation of the evidence on which the charges are based; and

3. The applicant or client shall be given an opportunity to present facts and views relating to the charges;

(d) Due process procedures shall precede any suspension from CDPCRC, except when immediate removal of the applicant or client from CDPCRC is necessary, in the judgment of the director or a designee, to protect persons or property or to prevent disruption of CDPCRC programs. In such cases, the due process procedures shall follow the suspension as soon as possible, but in no case later than five (5) class days following the effective date of the suspension.

(2) Expulsion.

(a) The director or a designee may expel an applicant or client under the following conditions:

1. The offense results in the applicant or client being convicted of a felony or misdemeanor committed on CDPCRC property, or while under the CDPCRC's jurisdiction;

2. The offense is a repeat of an earlier offense for which the applicant or client was suspended;

3. The offense is an instance of a history of persistent misconduct, and efforts to cause a change in the applicant's or client's behavior have been unsuccessful;

4. The offense involves violence, and in the opinion of the director or a designee, others are likely to be harmed if the applicant or client remains at CDPCRC; or

5. The offense is a flagrant and willful violation of CDPCRC regulations, and in the opinion of the director or a designee, there is little likelihood that efforts to deter the applicant or client from committing similar offenses will be successful.

(b) No expulsion shall occur until the following procedures have been followed:

1. The director shall appoint a person to review the expulsion decision;

2. The person designated to review the decision shall set a time for a hearing, within ten (10) class days of the proposed date of the expulsion;

3. The individual involved, and the parents or guardian if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the nature of the charges and the time and date set for the hearing;

4. The individual involved and the parents or guardian, if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the right to appear at the hearing and to be represented by counsel or other representation;

5. The hearing shall be held, and the individual involved and the representative shall have the right to present evidence in the applicant's or client's behalf and to cross-examine witnesses; and

6. The hearing shall stand in place of the agency [~~expedited~~] administrative review requirement, and the applicant or client and the representative shall be informed of the right to a fair hearing.

(c) Whenever a CDPCRC enrollee is informed of the intent to suspend or expel, the individual shall be also informed of the availability of the Client Assistance Program.

(d) An applicant or client who is dissatisfied with the results of the expedited administrative review may request an impartial hearing pursuant to 781 KAR 1:010.

Section 6. Attendance Policy. (1) Students shall be treated uniformly in terms of their attendance at CDPCRC. Each classroom instructor shall maintain a uniform attendance accounting procedure.

(2) The instructor or training supervisor shall determine when an absence or tardy from a scheduled class is excused or unexcused.

SAM SERRAGLIO, Commissioner
WILLIAM D. HUSTON, Secretary

APPROVED BY AGENCY: July 6, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1994 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boule-

vard, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency by August 24, 1994, 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: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521. The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Parsons

(1) Type and number of entities affected: All applicants and clients of the Department of Vocational Rehabilitation.

(a) Direct and indirect costs or savings to those affected: There is no direct or indirect costs or savings.

1. First Year: None

2. Continuing costs for savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or 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: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.

TIERING: Was tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation sets standards for admission to and discharge from the Carl D. Perkins Comprehensive Rehabilitation Center.

3. Minimum or uniform standards contained in federal mandate. The federal mandate require states to adopt such policies and procedures as is necessary for the administration of the vocational rehabilitation program.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. No federal standards exist for the governance of state owned and operated facilities. This regulation sets standards for admission and discharge which are necessary for service delivery as the Carl D. Perkins Comprehensive Rehabilitation Center.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Proposed Amendment)

781 KAR 1:060. Admission and discharge from [~~work training centers and~~] community facilities.

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b)

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This regulation establishes criteria for the provision of services by [~~the work training centers, and~~] community facilities.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Department" means Department of Vocational Rehabilitation, and appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

[~~Section 2. Work Training Centers Admissions and Discharges. (1) Individuals admitted to Department work training centers shall be applicants or clients.~~

~~(2) The determination of whether an individual shall be admitted to a work training center shall be made by the designated department staff.~~

~~(3) An applicant or client shall not be admitted to a work training center if there is evidence that the individual's medical or behavioral condition represents a risk to the health or safety of self or others.~~

~~(4) The following conditions shall be sufficient for discharge from the department's work training centers:~~

~~(a) The applicant or client completes the program goals, and no~~

~~further services are needed from the work training center;~~

~~(b) The applicant's or client's medical or behavioral condition is such that one (1) of the following is true:~~

~~1. The applicant or client represents a risk to the health or safety of self or others;~~

~~2. The applicant or client is unable to pursue the program goals.~~

~~(c) The applicant or client wishes to leave the work training center, and cannot be convinced to stay; or~~

~~(d) The client obtains employment.~~

~~(5) The department staff shall determine when it is appropriate to discharge an applicant or client from a work training center.~~

~~(6) An applicant or client shall not be discharged involuntarily from a work training center without ten (10) working days notice, unless:~~

~~(a) Removal of the applicant or client from the work training center is necessary to prevent harm to people or property, or to prevent disruption of the center's program.~~

~~(b) The mental hospital in which the applicant or client is in residence discharges the applicant or client, and the home area is too distant to allow the work training center program to continue.~~]

Section 2. [~~3.~~] Community Facilities. (1) The department shall utilize existing rehabilitation facilities to the maximum extent feasible to provide vocational rehabilitation services to individuals with disabilities [~~in accordance with the state plan for rehabilitation facilities~~].

(2) The department may utilize out-of-state facilities when necessary services are not available in Kentucky.

(3) The department may utilize privately owned and operated facilities. [~~Volume services shall be purchased solely from facilities which maintain accreditation through the Commission on Accreditation of Rehabilitation Facilities (CARF).~~]

(4) [~~The department shall not be obligated to purchase services solely on the basis of accreditation. For occasional purchase of services, CARF accreditation shall not be required; however, the department shall seek services that are of comparable quality.~~

~~(5)~~] For purchase of services, the department may set or use an established fee.

SAM SERRAGLIO, Commissioner
WILLIAM D. HUSTON, Secretary
APPROVED BY AGENCY: July 6, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 29, 1994 at 10 a.m. Eastern Time in the DVR Training Room, 61-62 Fountain Place, Wilkinson Boulevard, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency by August 24, 1994, 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: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3521. The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Parsons

(1) Type and number of entities affected: Community based rehabilitation facilities and the applicants and clients who use the services of the facilities.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings. Only the funding mechanism is being changed.

1. First Year: None

2. Continuing costs for savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The department will be better able to monitor expenditures for facilities and to direct case service expenditures consistent with applicant and client choices.

(a) Direct and indirect costs or savings: Administrative reporting and tracking costs will decrease substantially.

1. First Year: Approximately $37,821 will be saved in administrative reporting and tracking costs and travel costs.

2. Continuing costs or savings: The administrative and reporting and tracking costs savings will continue at approximately the same dollar figure with adjustments for inflation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be fewer reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 amendments to the Rehabilitation Act of 1973 and implementing federal regulations. References to the Work Training Centers are being deleted because that facility is no longer in operation.

TIERING: Was tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation establishes standards for admission to and discharge from agency operated facilities.

3. Minimum or uniform standards contained in federal mandate. The federal mandate requires states to adopt such policies and

procedures as is necessary for the administration of the Department of Vocational Rehabilitation.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. No federal standards exist for the governance of state owned and operated facilities. This regulation sets standards for admission and discharge which are necessary for service delivery at state operated facilities.

WORKFORCE DEVELOPMENT CABINET
Department for the Blind
(Proposed Amendment)

782 KAR 1:020. Definition of terms.

RELATES TO: KRS 163.450 to 163.470, 29 USC 701 et seq., 34 CFR Part 361

STATUTORY AUTHORITY: KRS 163.470, 29 USC 701 et seq., 34 CFR 361.41, 361.48, 361.49

NECESSITY AND FUNCTION: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its state plan for vocational rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish policies and procedures for the conduct of its programs. This regulation provides definitions of terms relating to 782 KAR 1:030, 782 KAR 1:040 and 782 KAR 1:050.

Section 1. Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Applicant" means an individual who submits an application for vocational rehabilitation services. [~~individual who has signed a letter or document requesting vocational rehabilitation services from the department and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.~~

~~(2) "Assistive technology" means any aid, device, or equipment of an electronic, mechanical, or specialized nature which has the potential to enable an individual to overcome visual handicaps.~~

~~(3) "Client" means an individual who has been determined eligible for services provided by the department under an individualized written rehabilitation program.~~]

(2) [~~(4)~~] "Comparable benefits" means any service, benefit or financial assistance available to an eligible individual [~~client~~] from a program other than the department which meets, in whole or part, the cost of services to be provided under an individualized written rehabilitation program.

(3) [~~(5)~~] "Correction" means the best visual functioning using conventional eyeglasses or contact lenses as prescribed by an ophthalmologist or optometrist.

(4) [~~(6)~~] "Counselor" means a vocational rehabilitation counselor of the department who is responsible to maintain a counseling relationship with an applicant or eligible individual [~~client~~] in order to determine eligibility for, plan, coordinate and authorize an individualized written rehabilitation program of services [~~that will enable the individual to overcome handicaps to employment or vocational functioning~~].

(5) [~~(7)~~] "Department" means the Department for the Blind.

(6) "Eligible individual" or "client" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

[~~(8) "Extreme medical risk" means, based upon medical evidence provided by an appropriate licensed medical professional, there exists a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.~~]

(7) [~~(9)~~] "Institution of higher education" means a university, college, community college, junior college, vocational school, business school, technical institute, or hospital school of nursing.

[~~(10) "Maintenance" means basic living expenses, such as food, shelter, clothing and other basic subsistence expenses.~~]

(8) [~~(11)~~] "Progressive visual disorder" means a visual condition where the impairment is not complete or fully developed at time of medical diagnosis, and there is a medical prognosis that the impairment will increase in extent or severity.

[~~(12) "Post-employment services" means those services necessary to assist an individual to maintain employment or regain other suitable after the individual has been determined to be rehabilitated.~~]

(9) [~~(13)~~] "Services" means those goods and services that are appropriate to meet the vocational rehabilitation needs of each individual.

[~~(14) "Transportation" means necessary travel and related expenses including subsistence during travel in connection with transporting applicants and clients and their attendants or escorts for the purpose of supporting and deriving the full benefit of other services being provided.~~

~~(15) "Visual disability" means a visual condition with correction which materially limits, contributes to limiting, or if not attended to by means other than correction, will probably result in limiting an individual's employment activities or vocational functioning. Included in this definition are those visual conditions diagnosed as progressive visual disorder.~~]

PRISCILLA ROGERS, Commissioner

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 10 a.m., at the Kentucky Department for the Blind, 427 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, 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: Ed Rademaker, Director, Division of Client Services, Kentucky Department for the Blind, 427 Versailles Road, Frankfort, Kentucky 40601, (502) 573-4754. The Department for the Blind does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in the provision of employment and service opportunities. The public hearing facility is accessible and the department will provide upon request reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Ed Rademaker

(1) Type and number of entities affected: Applicants and eligible individuals of the Department for the Blind.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs for savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or 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: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Counsel has advised that the materials is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.

TIERING: Was tiering applied: No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 USC 107 et seq.; 34 CFR 361

2. State compliance standards. This amends appropriate terminology and definitions consistent with the Rehabilitation Act Amendments of 1992.

3. Minimum or uniform standards contained in federal mandate. The federal law mandates states to adopt and define consistent terminology for the vocational rehabilitation services provided.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No

5. Justification for the imposition of the stricter standards or additional or different responsibilities or requirements.

WORKFORCE DEVELOPMENT CABINET
Department for the Blind
(Proposed Amendment)

782 KAR 1:030. Scope and nature of services.

RELATES TO: KRS 163.450 to 163.470, 29 USC, 701 et. seq., 34 CFR 361

STATUTORY AUTHORITY: KRS 163.470, 29 USC, 701 et. seq., 34 CFR 361.42

NECESSITY AND FUNCTION: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish and maintain written policies and procedures covering the scope and nature of the services it provides and the conditions, criteria, and procedures under which each service is provided.

Section 1. Assessment. [~~Evaluation of Vocational Rehabilitation Potential.~~] In determining the eligibility of an individual or in determining the scope and nature of services needed by an individual, the department may obtain a second opinion from a specialist qualified and skilled in diagnosis and treatment and licensed in accordance with state laws and regulations.

Section 2. Vocational Goal. Services shall be provided in accordance with an individualized written rehabilitation program which emphasizes primarily the determination and achievement of a vocational goal which shall be consistent with the abilities and capacities of the eligible individual [~~client~~].

Section 3. Vocational Training at Institutions of Higher Education. (1) Services provided at institutions of higher education are subject to Section 17 of this regulation on comparable benefits.

(2) The amount paid by the department for tuition shall not exceed the highest rate for tuition charged by an in-state public institution of higher education, unless the eligible individual [~~client~~] is in a degree program not offered by an in-state public institution.

(3) The department may pay for fees associated with attendance at an educational institution only if such fees are required for all individuals who attend the institution.

(4) Eligible individual [~~Client~~] need for books, supplies, tools and other materials may vary according to the school and course work, but the amount the department may pay shall not exceed the need analysis made by the student financial aid office of the institution the eligible individual [~~client~~] attends, or if such analysis is not available, then the department shall pay only for actual costs of materials needed for each course.

(5) The eligible individual [~~client~~] shall maintain full-time status as defined by the institution, unless a status of less than full-time is needed to graduate in the current year.

(6) By the end of the second term or semester, an eligible individual [~~client~~] must have achieved an overall "C" grade average or such standing required for admission, licensure or certification and must maintain this standing for each subsequent term or semester.

(7) Exceptions may be granted to subsections (5) and (6) of this section, but only according to the following criteria:

(a) The eligible individual [~~client~~] shall have needs or [~~temporary~~] circumstances[~~, such as sudden severe illness,~~] which render[~~s~~] the eligible individual [~~client~~] unable to maintain the standards in subsections (5) and (6) of this section;

(b) The eligible individual [~~client~~] shall notify the counselor of the needs or [~~temporary~~] circumstances prior to any change of standing at the institution;

(c) Any exception shall not compromise the program requirements that the employment objectives of the client must be realistic and attainable; [~~The temporary circumstances shall be supported by documented evidence; and~~]

(d) Any exception to subsection (6) of this section shall not be extended beyond one (1) year; and

(e) Any exception shall be consistent with federal regulations contained in EDGAR (34 CFR 80.22) which provide that costs to be allowable under a grant program must be necessary and reasonable for the proper administration of the grant program.

(8) The eligible individual [~~client~~] shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(9) The counselor shall terminate services at an institution of higher education for an eligible individual [~~client~~] who does not maintain the standards of subsections (5), (6), (7) and (8) of this section, and shall simultaneously notify the eligible individual [~~client~~] of appeal procedures available under 782 KAR 1:040.

(10) Services terminated under subsection (9) of this section, may be reinstituted if the outcome of the eligible individual's [~~client's~~] appeal of the counselor's decision through administrative regulation 782 KAR 1:040 so directs or if the eligible individual [~~client~~] meets the standard under which services were terminated through his own initiative.

Section 4. On-the-job-training. On-the-job-training provided in private or public employment other than within the department shall be subject to the following conditions:

(1) [~~The client may be sponsored for on the job training not to exceed three (3) months for nonskilled positions or six (6) months for skilled or professional positions;~~

~~(2)~~] The eligible individual [~~client~~] shall receive at least minimum wage;

(2) [~~(3)~~] The employer shall be responsible for the provision of benefits and privileges that accrue to other employees;

(3) [~~(4)~~] Prior to the training, a written agreement shall be completed by the counselor between the department and the employer giving a description of goals and objectives of the training, including, the length of training, the skills taught, wages earned and an understanding that the eligible individual [~~client~~] shall be hired as a permanent employee after successful completion of the training program;

(4) [~~(5)~~] The eligible individual [~~client~~] shall make satisfactory progress as documented by training reports provided by the employer; and

(5) [~~(6)~~] The agreement for on-the-job training may be terminated by the department, the employer, or the eligible individual [~~client~~] if the conditions of this section are not met.

Section 5. Work Experience/Work Adjustment. Programs of work experience in private or public employment other than within the department shall be provided according to the following conditions:

(1) The individual may be sponsored for a period not to exceed 520 total hours of work experience;

(2) A written agreement shall be completed by the counselor between the department and the employer or provider of services to designate the length of the work experience, the number of hours to be worked each week, and payment that the individual will receive, and any payment to the provider by the department;

(3) The employer or provider must monitor the performance of the individual in work experience and make periodic reports to the counselor; and

(4) The work experience contract may be terminated by the department at anytime if it is determined that the work experience is not beneficial to the individual.

Section 6. Physical and Mental Restoration. (1) An applicant or eligible individual [~~client~~] shall have freedom of choice of any specialist qualified and skilled in an appropriate field of restoration practice providing the specialist is licensed in accordance with state laws and regulations and agrees to provide services according to established state laws and regulations.

(2) Restoration services shall not be provided outside the Commonwealth of Kentucky, unless:

(a) The service[s] is provided in a nearby out-of-state area routinely used for the convenience of the department;

(b) The out-of-state service may be cost saving;

(c) The service is not provided in state; or

(d) The provision of an in-state service would delay service to an eligible individual [~~client~~] at extreme medical risk.

Section 7. Maintenance. (1) Maintenance may be provided only when necessary to support and derive the full benefit of other services being provided.

(2) Maintenance may begin at any time after other services have begun, but shall cease thirty (30) days after the eligible individual [~~client~~] has achieved suitable employment.

(3) The amount the department may pay for room and board for an eligible individual [~~client~~] enrolled in an institution of higher education shall not exceed the highest rate for campus residence room and board charged by an in-state public institution.

(4) Room and board shall not be provided for an eligible individual [~~client~~] who attends an institution of higher education in the home community of the eligible individual [~~client~~], unless:

(a) Transportation is not available; or

(b) The cost of transportation exceeds the rate of on-campus residence and board at the institution.

(5) Lodging and meals provided in support of services other than at an institution of higher education shall be limited in cost to:

(a) For a period less than thirty (30) days may not exceed the per diem rates established for state employees by the Kentucky Finance and Administration Cabinet; and

(b) For a period more than thirty (30) days may not exceed the written rates of payment established by the department. [~~eight (8) dollars per day for food and twelve (12) dollars per day for lodging.~~]

(6) The department shall not provided for maintenance identified only as personal expenses or miscellaneous expenses.

Section 8. Transportation. (1) Public transportation by common carrier shall be at a cost that is economically most prudent and feasible to the department.

(2) Private transportation by private vehicle shall be at the mileage rate established for state employees by the Kentucky Finance and Administration Cabinet.

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for state employees by the Kentucky Finance and Administration Cabinet.

(4) The total cost of transportation allowed for commuting between home and campus for an eligible individual [~~client~~] who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for an eligible individual [~~client~~] who resides on campus at an institution of higher education shall be limited annually to six (6) round trips between the eligible individual's [~~client's~~] home and the campus.

(6) Transportation may include relocation and moving expenses when necessary for an eligible individual [~~client~~] to achieve placement in employment.

Section 9. Interpreter Services. Interpreter services may be provided only in conjunction with other services and only if sign language is a necessary means of communication for the individual.

[~~Section 10. Services to Family Members. Services to members of a client's family may be provided only when necessary for the vocational rehabilitation of the client.~~]

Section 10. [~~11.~~] Reader Services. Reader services may be provided for individuals who are blind only in conjunction with other services and only when recordings of printed materials are not readily available through the volunteer recording services of the department.

Section 11. [~~12.~~] Assistive Technology. (1) Assistive technology that has the capacity to improve low vision shall be provided by individualized prescriptions and fittings performing by individuals licensed to fill such prescriptions and licensed to perform such fittings.

(2) Assistive technology may be provided only when there is evidence that the eligible individual [~~client~~] has ability and capacity to successfully use assistive technology.

(3) Exotic and expensive assistive technology may be provided only after it has been determined that less expensive and more traditional aids and devices for the eligible individual [~~client~~] are not

feasible.

(4) Should it be determined that assistive technology is no longer needed for the purpose for which it is provided, the eligible individual [~~client~~] shall be responsible to return such to the department.

(5) Assistive technology shall be provided in a new or like new condition, and if such becomes defective, worn out, or obsolete during the course of an eligible individual's [~~client's~~] individualized written rehabilitation program, it shall be repaired or replaced by the department.

(6) After an eligible individual [~~client~~] has been determined to be rehabilitated, the eligible individual [~~client~~] shall have the responsibility to repair or replace defective, worn out or obsolete assistive technology unless such repair or replacement is allowable under postemployment services.

Section 12. [~~13.~~] Self-employment. Subject to the following conditions, the department may participate in a program of self-employment for a client:

(1) The eligible individual [~~client~~], and the proposed self-employment enterprise, shall undergo appropriate and significant evaluation to determine the feasibility of the enterprise and the eligible individual's [~~client's~~] abilities and capacities to successfully manage the enterprise of self-employment;

(2) The eligible individual [~~client~~] shall obtain the required licenses, permits, certificates, and leases, and in all instances operate the enterprise by in conformity with all federal, state, and local laws and regulations, including Wages and Hour Laws, Civil Rights Act of 1964 as amended, and Occupational Safety and Health Act Standards, as amended;

(3) The department shall have the option to review the proposed recordkeeping system prior to the establishment of the enterprise and periodically for a period not to exceed five (5) years; and

(4) The department's financial participation in a self-employment enterprise for an eligible individual [~~client~~] shall not exceed $5,000, unless there is a strong likelihood that the department may recover the cost of its participation from another source.

Section 13. [~~14.~~] Tools and Equipment. Tools, equipment and supplies that have been provided to an eligible individual [~~client~~] will be recovered by the department if the eligible individual [~~client~~] ceases to use such for the pursuit and practice for which they were provided.

Section 14. [~~15.~~] Recordings of Printed Materials. (1) Cassette recording of textbooks and other vocational materials shall be made available through the department's volunteer recording program.

(2) An eligible individual [~~Since services provided by the volunteer recording program are subject to Section 17 of this administrative regulation on comparable benefits, each client~~] requesting recorded materials from the volunteer recording program of the department shall also make application and use as a primary resource:

(a) "Recordings for the blind;" and

(b) "The Kentucky Library Services for the Blind and Physically Handicapped," the Regional Program of the Library of Congress.

~~[Section 16. Postemployment Services. The provision of postemployment services shall be subject to the following conditions:~~

~~(1) Services shall be necessary to assist the individual in maintaining or regaining employment;~~

~~(2) Services shall be a relatively simple and one (1) time service that relates to a handicapping condition previously identified in a eligibility determination and individualized written rehabilitation program of the individual;~~

~~(3) Services shall not be provided solely to upgrade an individual's financial status nor to provide physical restoration for acute conditions resulting from accidents or sudden illness;~~

~~(4) Postemployment services shall be subject to Section 17 of this administrative regulation regarding comparable benefits and Section 18 of this administrative regulation regarding participation of the individual in the cost of services.~~]

Section 15. [~~17.~~] Comparable Benefits. (1) [~~Comparable benefits shall be utilized as a first source to meet the cost of services to be provided under an individualized written rehabilitation program.~~

~~(2) Except for conditions listed in subsections (3) and (4) of this section, if a client refuses to apply for or utilize comparable benefits, then the department cannot provide for the cost of such services.~~

~~(3) The requirements of subsection (2) of this section shall not apply to the following services:~~

~~(a) Evaluation of rehabilitation potential;~~

~~(b) Counseling, guidance, and referral;~~

~~(c) Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials, that are not provided in institutions of higher education;~~

~~(d) Placement; and~~

~~(e) Rehabilitation engineering.~~

~~(4) The requirements of subsection (2) of this section shall not apply if the determination of the availability of comparable benefits under any other program shall delay the provision of services to any client who is at extreme medical risk.~~

~~(5)~~] If an eligible individual [~~client~~] is provided training services at an institution of higher education, the eligible individual [~~client~~] shall annually apply for comparable benefits made available through the financial aid office of the institution.

(2) [~~(6)~~] The department shall maintain cooperative agreements with the Kentucky Association of Student Financial Aid Administrators and the Kentucky Higher Education Assistance Authority for improved coordination of comparable benefits for eligible individuals [~~clients~~] who are enrolled in institutions of higher education.

(3) [~~(7)~~] Grant assistance, meaning gifts, endowments, or scholarships (but not student assistance under subsection (8) of this section [~~loans, work-study funds or other aid termed self-help~~]) provided as financial assistance for clients who are enrolled in institutions of higher education, shall be considered comparable benefits.

(4) [~~(8)~~] Guaranteed student loans, national direct or student loans, work-study payments, [~~and~~] other aid termed self-help, and unrestricted monetary awards from a civic, professional or social organization provided as financial assistance for eligible individuals [~~client~~] who are enrolled in institutions of higher education shall not be considered as comparable benefits.

(5) [~~(9)~~] The department shall not be bound by any determination of an eligible individual's [~~client's~~] need of service or the cost of service as identified by the financial aid office of an institution of higher education, but rather shall determine such need and the allowable cost of services according to the Rehabilitation Act and state laws and regulations.

(6) [~~(10)~~] Comparable benefits awarded for purposes of higher education shall be applied for the services designated by the granting authority. Where there is no clear designation, such as in the case of a Pell grant, the award shall be prorated by percentage to pay in part for each expense of tuition and fees, books and supplies, room and board, personal expenses, and transportation that was used as the basis of the award. The percentage used for distribution shall be the amount of the award divided by the total of all expenses for tuition and fees, books and supplies, room and board, personal expenses, and transportation that was used as the basis of the award.

Section 16. [~~18.~~] Participation of Individual in the Costs of Services. There is no requirement by the department that the financial need of an individual with a disability [~~handicap~~] be considered in the provision of services. However, each individual who is determined to be eligible for services shall be asked to voluntarily participate to help pay the costs associated with the individualized written rehabilitation

program. No services shall be denied to an individual who does not have the available resources or who refuses to participate.

Section 17. [~~19.~~] Purchase of Services. (1) The department shall establish and maintain written rates of payment for all purchased services.

(2) The cost of any services may not exceed the written rates of payment established by the department. An individual who wishes a service in excess of the established rates of payment shall pay any excess cost.

(3) Services purchased by the department shall be made by written authorization of a counselor or other designated staff either before or at the same time as the purchase of services.

(4) In an emergency situation, a counselor or other designated staff may make an oral authorization to purchase services but there must be prompt documentation and the authorization shall be confirmed in writing and forwarded to the provider of the services.

(5) Any vendor providing services authorized by the department shall agree not to make any charge to or accept any payment from an applicant or eligible individual [~~client~~] unless the amount of the charge or payment is previously known and approved by the department.

Section 18. [~~20.~~] Emergency Denial of Services. The department may immediately suspend or terminate any services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

PRISCILLA ROGERS, Commissioner

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 10 a.m., at the Kentucky Department for the Blind, 427 Versailles Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, 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: Ed Rademaker, Director, Division of Client Services, Kentucky Department for the Blind, 427 Versailles Road, Frankfort, Kentucky 40601, (502) 573-4754. The Department for the Blind does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in the provision of employment and service opportunities. The public hearing facility is accessible and the Department will provide upon request reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Ed Rademaker

(1) Type and number of entities affected: Applicants and eligible individuals of the Department for the Blind.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings.

1. First year: None
2. Continuing costs for savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The only reporting requirements are those needed to promulgate this regulation.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: There are no direct or 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: There is no additional paperwork other than that needed to promulgate this regulation.

(3) Assessment of anticipated effect on state and local revenues: There should be no additional impact on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Counsel has advised that the materials is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, regulation or policy which is in conflict, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments: This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.

TIERING: Was tiering applied: No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 USC 107 et seq.; 34 CFR 361

2. State compliance standards. This amends the existing regulation governing scope of vocational rehabilitation services to individuals who are blind and visually impaired consistent with the Rehabilitation Act Amendments of 1992.

3. Minimum or uniform standards contained in federal mandate. The federal law mandates states to provide vocational rehabilitation services to eligible individuals under state prescribed conditions, criteria and procedures.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. These amendments to existing state prescribed conditions, criteria and procedures conform to the requirements imposed by the Rehabilitation Act Amendments of 1992.

LABOR CABINET
Department of Workplace Standards
Division of Employment Standards and Mediation
(Proposed Amendment)

803 KAR 1:035. Hearing procedure.

RELATES TO: KRS 337.020 to 337.405

STATUTORY AUTHORITY: KRS 337.295

NECESSITY AND FUNCTION: KRS 337.310 requires the Commissioner of Workplace Standards, Labor Cabinet, to decide all questions of fact arising under KRS 337.020 to 337.405. KRS Chapter 13A and 337.295 authorizes the commissioner to issue regulations pertaining to these statutes. The function of this regulation is to set up the procedure to be followed by the Commissioner of Workplace

Standards in deciding the questions of fact as required by the statute and to insure that the parties to proceedings concerning alleged violations of the statutes are afforded a fair opportunity to present any and all relevant proof on the matter.

Section 1. Procedure. (1) The Commissioner of Workplace Standards, or his authorized agent, shall investigate any complaint or routinely inspect records relating to an alleged violation of KRS 337.020 to 337.405.

(2) Where a settlement cannot be reached between the employer and employee and if an investigation reveals that questions of fact are in issue or the complaint or routine inspection gives the commissioner, or his authorized agent, good cause to believe that factual issues need to be resolved, then the commissioner, or his authorized agent, shall evaluate all proof submitted and render his tentative findings of fact. The proof to be evaluated by the commissioner, or his authorized agent, shall include, but is not limited to: the findings of the investigator, sworn affidavits, contractual agreements, payroll records, and other evidence relating to an alleged violation of KRS 337.020 to 337.405.

(3) The party suffering adversely from these tentative findings of fact shall have fifteen (15) days from the issuance of the findings to submit a petition for a fact-finding hearing to the commissioner. The petition shall contain a brief statement of the petitioner's grounds for believing the tentative findings of fact to be in error and any affirmative defense to the findings. Failure to state such grounds or defenses shall be cause for the commissioner, or his authorized agent, to deny the petitioner a hearing. The commissioner, or his authorized agent, shall set a hearing date in order to make final findings of fact concerning the alleged statutory violation. The parties shall be notified of the hearing date by return receipt mail at least fifteen (15) days prior to the hearing. If a petition for a fact-finding hearing is not sought, then the tentative findings of fact shall become a final order fifteen (15) days after the issuance of the tentative order.

(4) The commissioner, or his authorized agent, may conduct the hearing in either the Frankfort or Louisville offices of the Labor Cabinet. However, with unanimous consent of the parties and the commissioner, or his authorized agent, the hearing may be held at a site in the Commonwealth mutually agreeable to the parties and the commissioner, or his authorized agent.

(5) The hearings shall not be governed by the rules of evidence prevailing in the courts of the Commonwealth. However, due regard will be had for generally accepted rules of administrative agency hearings in the Commonwealth. A written transcript of the hearing shall be made, unless the parties and the hearing officer agree that the hearing be video taped, in which event the video tape shall serve as record of the proceedings.

(6) Subsequent to the hearing, but within thirty (30) [~~fifteen (15)~~] days of receipt of the hearing transcript, the commissioner, or his authorized agent, shall evaluate the proof and render his final findings of fact and order, unless otherwise agreed to by the parties.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994, at 10 a.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Bill Riggs, Director, Division of Employment Standards and Mediation, 1047 U.S. 127 South, Suite 3, Frankfort, Kentucky 40601, (502) 564-2784.

REGULATORY IMPACT ANALYSIS

Agency Contact: Rex Hunt, Bill Riggs

(1) Type and number of entities affected: This proposed amendment affects all employers defined in KRS 337.010.

(a) Direct and indirect costs or savings to those affected: Affected employers could realize a costs savings in court reporter fees if they elect to video tape hearings rather than have the proceedings transcribed.

1. First year: Minimal savings.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this proposed amendment which will increase or decrease costs.

(b) Reporting and paperwork requirements: This proposed amendment will require employers contesting tentative findings of fact to file contest with specificity.

(2) Effects on the promulgating administrative body: The promulgating body will have savings in eliminating groundless administrative hearings.

(a) Direct and indirect costs or savings: The agency will save unnecessary court reporting fees and employee work time.

(1) First year: Substantial

(2) Continuing costs or savings: Substantial

(3) Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The agency must closely scrutinize employer contests for necessary grounds.

(3) Assessment of anticipated effect on state and local revenues: Possibly substantial.

(4) Assessment of alternative methods; reasons why alternative 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 case. This regulation applies to all employers and employees in Kentucky who are involved in wage and hour complaints before the Kentucky Labor Cabinet.

LABOR CABINET
Department of Workers' Claims
(Proposed Amendment)

803 KAR 25:012. Resolution of medical fee disputes.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.125, 342.260, 342.325, 342.735

NECESSITY AND FUNCTION: KRS 342.260 requires the Commissioner of the Department of Workers' Claims [~~Compensation Board~~] to prepare such administrative regulations as he [~~it~~] considers necessary to carry on his [~~its~~] work and the work of the administrative law judges under KRS Chapter 342. KRS 342.325 [~~342.260~~] requires that questions arising under KRS Chapter 342 which are not settled by agreement of the parties shall be determined by an administrative law judge, and KRS 342.735 requires the commissioner [~~board~~] to establish regulations to expedite the payment of medical expense

benefits. The function of this administrative regulation is to regulate the resolution of medical fee disputes before the administrative law judges.

Section 1. Definition. "Physician" shall have the same meaning as in KRS 342.0011(32).

Section 2. Procedure. (1) Any employee, provider of medical services, employer or employer's medical payment obligor may seek adjudication of a dispute regarding the payment or nonpayment of any medical expense by filing a Request to Resolve Medical Fee Dispute (Form 112).

(2) A Request to Resolve Medical Fee Dispute (Form 112) may be filed to resolve questions concerning the payment, nonpayment, reasonableness, necessity or work-relatedness of any medical expense, treatment, procedure, statement or service performed, rendered, or about to be performed or rendered under KRS Chapter 342.

(3) A Form 112, copies of disputed bills and supporting affidavits setting forth facts sufficient to show that the movant is entitled to the relief sought shall be filed with the commissioner, with sufficient copies to serve all other parties, within thirty (30) days of the date of receipt of a statement for services or within thirty (30) days of the time in which the compensability of a medical expense or treatment is known to be in dispute, whichever first occurs. The commissioner shall serve copies on all named parties unless an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, in which event service shall be made by the movant. Opposing parties may file responses within twenty (20) days after notice of the request to resolve medical fee dispute. A response shall be accompanied by affidavits setting forth facts sufficient to show the movant is not entitled to the relief sought, and shall be served on the other parties.

(4) Requests to resolve medical fee disputes shall be assigned as follows:

(a) If an application for adjustment of claim has not been filed concerning the injury or disease which is the subject of the dispute, the commissioner shall assign the request to the Frankfort administrative law judge motion docket and the request shall be processed in the same manner as other motions in claims to which an administrative law judge has not been permanently assigned.

(b) If an application for adjustment of claim is pending concerning the injury or disease which is the subject of the dispute, the request shall be assigned to the same administrative law judge to whom the application for adjustment of claim has been assigned.

(c) If an award or other final decision has been rendered by an administrative law judge concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion to reopen in accordance with KRS 342.125 and other applicable law and shall initially be placed upon the Frankfort administrative law judge motion docket. Service shall be made upon all opposing parties by the movant.

(d) If an appeal is pending before the board concerning the injury or disease which is the subject of the dispute, the request shall be accompanied by a motion for a partial remand to the administrative law judge who ruled on the application for adjustment of claim, unless entitlement to medical services under KRS 342.020 is dependent upon resolution of the appeal. If entitlement to medical services is dependent upon resolution of the appeal, the request shall be accompanied by a motion to the board to hold the request in abeyance pending a final decision on the appeal.

Section 3. [2.] Scope of Request and Burden of Proof. (1) A single request may encompass statements, services and treatment previously rendered as well as future statements, services and treatment of the same nature, or for the same condition, if noted in the request, in which event the dispute shall be deemed continuing and repeated requests concerning the same subject matter need not be made.

(2) If a final award or decision has not been previously entered establishing the employee's right to medical services under the Act, the burden of proving entitlement shall be upon the employee or provider of medical services, while the burden with respect to unreasonableness and nonnecessity shall fall upon the employer or employer's medical payment obligor.

(3) An administrative law judge shall review all pleadings, affidavits, or other evidence in the record and render a decision which shall be filed of record and served on all parties to the dispute. The administrative law judge shall not be precluded from taking any other action deemed necessary to resolve the dispute.

(4) If the administrative law judge determines that such proceedings have been brought, caused to be brought, prosecuted, or defended without reasonable ground, the whole cost of the proceedings may be assessed upon the party who has brought, caused to be brought, prosecuted, or defended the proceedings without reasonable ground as provided by KRS 342.310.

(5) Any party aggrieved by the decision of the administrative law judge may appeal to the Workers' Compensation Board by following the procedures set out in Section 12 of 803 KAR 25:011.

Section 4. Expedited Medical Fee Disputes. (1) If prior to the filing of a formal application for adjustment of claim a dispute arises requiring expedited determination of the reasonableness, appropriateness or employer's liability for proposed medical care, the lack of which could lead to serious physical or mental disability or death, an employee or employer may seek an expedited determination by filing a written request (on Form 120EX), together with:

(a) An affidavit of the employee or other witness that the injury or disease which is the subject of the dispute is compensable under KRS Chapter 342 in the format prescribed in Appendix A.

(b) An affidavit of a physician which explains why failure to obtain or undertake the proposed medical care within forty-five (45) days could lead to serious physical or mental disability or death of the employee. The physician's affidavit shall set forth the diagnosis of the patient, the clinical and diagnostic findings upon which the diagnosis is based, the proposed treatment, and detail why immediate initiation of the proposed treatment is necessary. Where feasible, an estimate of the cost of the proposed treatment shall be presented. The format for a physician's affidavit is set forth in Appendix B.

(c) Any other affidavits or authenticated documents necessary to demonstrate that the movant is entitled to the relief sought.

(2) The Form 120EX and attachments shall be filed in triplicate with the commissioner who shall serve copies on all named parties. Respondents to a Form 120EX may file responses within ten (10) days of the date on which the Form 120EX is served by mail. Service shall be deemed complete the third day after mailing by the commissioner. Responses shall be accompanied by affidavits setting forth facts sufficient to demonstrate that the movant is not entitled to the relief sought, and shall be served on the other parties by the respondent.

(3) The chief administrative law judge may refer the matter to an ombudsman to attempt to effectuate a resolution of the dispute.

(4) The administrative law judge to whom a request for expedited determination of medical issues is assigned shall issue a ruling within seven (7) days after expiration of the response time.

APPENDIX A
EXPEDITED MEDICAL DISPUTE
AFFIDAVIT OF EMPLOYEE

Affiant, (Name), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns treatment for a condition compensable under the Kentucky Workers' Compensation Act. Affiant further states:

1. Date and time of work-related injury or date on which occupational disease was discovered:
2. Brief description of how injury occurred or how occupational disease was acquired:
3. Date and identity of person to whom notice of injury or occupational disease was given:
4. Medical treatment at issue:
5. Attempts, if any, to obtain approval for contested treatment:

Signature:
(Date):

STATE OF:
COUNTY OF:
Subscribed and sworn to before me by (Name) this (day) day of (month), 19 .

Notary Public:
My commission expires:

APPENDIX B
EXPEDITED MEDICAL DISPUTE
AFFIDAVIT OF PHYSICIAN

Affiant, (Name), a physician whose area of specialization is (specialization), first being duly sworn, states that the attached Request for Expedited Determination of Medical Issue (Form 120EX) concerns a work-related injury or disease.
(1) The following medical care is required: (describe proposed medical care):
(2) The current working diagnosis is as follows:
(3) The proposed treatment is medically necessary because:
(4) The estimated cost of the proposed treatment is:
Affiant further states that failure of (Name of Workers' Compensation Patient) to obtain or undertake this proposed medical care within the next 45 days could lead to serious physical or mental disability or death because:

Signature:
(Date):
W. C. Medical Index No.:
Address:

STATE OF:
COUNTY OF:
Subscribed and sworn to before me by (Name) this (day) day of (month), 19 .

Notary Public:
My commission expires:

Section 6. [~~3.~~] Forms. (1) Revised Form 112 and Form 120EX are [~~is~~] adopted [~~by order of the Workers' Compensation Board~~] effective October 26, 1992, and are [~~is~~] incorporated by reference in this regulation.
(2) Information available.
(a) Information and material is available for public inspection and copying at main, regional, and branch offices of the agency:
1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;
2. Louisville - Fourth Floor - The Meyer Building, 624 West Main Street, Louisville, Kentucky 40202;
3. Lexington - 950 Commerce National Building, Lexington, Kentucky 40507;
4. Paducah - 220B North 8th Street, Paducah, Kentucky 42001.
5. Pikeville - The Justice Building, 3rd Floor, 314-316 Second Street, Pikeville, Kentucky 41501.
(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive, for this purpose.

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: July 14, 1994
FILED WITH LRC: July 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on August 23, 1994. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1994, 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 and prior arrangements for a transcript are made five days prior to the hearing. 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie Salven
(1) Type and number of entities affected: Employers, employees, insurers, and providers of medical services involved in workers' compensation medical fee disputes. Between 220 and 240 Form 112's are filed with the Department of Workers' Claims each month.
(a) Direct and indirect costs or savings to those affected:
1. First year: Expedited proceeding may result in savings to claimants and medical treatment providers in some cases since ruling may be obtained from administrative law judge prior to surgery in serious cases requiring prompt care.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.
(b) Reporting and paperwork requirements: Increased use Form 112, use of new Form 120EX.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Some additional costs to agency may result from need to process the Form 120EX.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: Use of ombudsmen to assist in processing of Form 120EX.
(b) Reporting and paperwork requirements: See discussion above.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative method; reasons why alternatives were rejected: Alternative is use of Form 112 for all medical disputes. HB 928 of the 1994 General Assembly requires an expedited method for resolving some medical issues.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None known.
(a) Necessity of proposed regulation if in conflict: See above.
(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: See above.
(6) Any additional information or comments: None
TIERING: Is tiering applied? Yes. Medical fee disputes are

assigned and handled differently if an application for adjustment of claim has been filed, an award has been rendered, or an appeal is pending. Some preclaim medical issues, mainly questions involving proposed treatment that cannot be delayed 45 days, may now be heard in an expedited proceeding.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 4:010. Fees of the Department of Insurance.

RELATES TO: KRS 304.4-010, 1994 Ky. Acts ch. 262, §4(4)

STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010, 1994 Ky. Acts ch. 262, §4(4)

NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amounts of the fees. This administrative regulation prescribes these services for which the Department of Insurance will charge fees and the amounts of those fees. Under 1994 Ky. Acts ch. 262, §4(4), an administrative agency shall charge fees based on costs for public records used for commercial purposes.

Section 1. The commissioner shall collect in advance fees as follows:

(1) Annual statement.

(a) Filing each year, $100.

(b) Filing additional or supplemental statement in the same year, $100.

(2) Filing charter documents.

(a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, $100.

(b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, $50.

(3) Certificate of authority.

(a) Issuance of original certificate, $500.

(b) Amending, to add a line, $50.

(c) Renewal, each year, $100.

(4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, $200.

(5) Self insurer.

(a) Application to become self insurer under subtitle 39, $200.

(b) Notification of self-insurance program under subtitle 32, $50.

(6) Agent licenses, foreign and alien insurers.

(a) Agent license, per insurer represented, biennial, $40.

(b) Temporary license as agent, $20.

(c) Nonresident agent, per insurer represented, biennial, $50.

(d) Resident corporate or partnership agent, per insurer represented, biennial, $100.

(e) Nonresident corporate or partnership agent, per insurer represented, biennial, $120.

(7) Surplus lines broker, reinsurance intermediary, or managing general agent, biennial, $100.

(8) Solicitor license, biennial, $40.

(9) Adjuster license, biennial, $50.

(a) Temporary license as apprentice adjuster, $25.

(b) Administrator's license, biennial, $50.

(10) Consultant license, biennial, $100.

(11) Agent licenses for risk retention agents, fraternal benefit societies, subtitle 32 corporations, health maintenance organizations, prepaid dental plan organizations, per fraternal benefit society, subtitle 32 corporation, health maintenance organization, or prepaid dental plan represented, biennial.

(a) Residents, $40.

(b) Nonresidents, $50.

(12) Filing agent and solicitor continuing education courses for:

(a) Approval, $5 per hour of continuing education credit; minimum of $10, maximum of $300.

(b) Biennial renewal, $5 per hour of continuing education credit; minimum of $10, maximum of $150.

(13) Late renewal of agent licenses pursuant to KRS 304.9-260, 304.32-190, 806 KAR 38:020, 806 KAR 43:010, and KRS 304.99-100, per insurer, subtitle 32 corporation, health maintenance organization, or prepaid dental plan organization represented.

(a) Residents, $40.

(b) Nonresidents, $50.

(14) Examination for or in connection with licensing of agents, solicitors, adjusters, and consultants, $50.

(15) Annual registration fee of unauthorized insurer under KRS 304.11-020(2), $500.

(16) Advisory organizations.

(a) Application for license, $500.

(b) Annual renewal, $100.

(17) Rate and form filings.

(a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner, $100.

(b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, $100.

(c) Other rate and form filings, $5.

(18) Insurance premium finance companies.

(a) Application for license, $500.

(b) Annual renewal, $100.

(19) Cost of administering subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.

(20) Computer printouts of lists, computer printouts of mailing labels, and magnetic tapes:

(a) Agents:

1. General lines or life and health, $300 [~~500~~].
2. General lines or life and health magnetic tape, $265 [~~1,000~~].
3. All other lines, $100.
4. Listing for each ZIP code, $50.
5. Appointments (activity) of a specific agent, $5.

(b) Adjusters, consultants, managing general agents, solicitors, surplus lines brokers, and third party administrators, $90 [~~100~~].

(c) Insurer directories:

1. All authorized insurers, $90 [~~150~~].
2. Insurers by line of insurance, $90 [~~100~~].
3. Appointments (activity) by a specific insurer, $50.

(d) Corporate or partnership agents:

1. Corporate or partnership agent directory, $90 [~~150~~].
2. Corporate or partnership agents by line of insurance, $90 [~~100~~].
3. Appointments (activity) of a specific corporation or partnership agent, $10.

(e) Other special requests, printouts or magnetic tapes not specified in this section [~~above~~], if the request is approved by the commissioner, the commissioner shall establish the cost for the request. [~~$500.~~]

(21) Miscellaneous services.

(a) Filing other documents, each, $5.

(b) Commissioner's certificate under seal, other than certificates, licenses, and other documents provided for in this section [~~above~~], each, $5.

(c) For copies of any document on file with the commissioner, per page, thirty (30) [~~fifty (50)~~] cents.

(d) Copy of annual statements, per page, $1.

Section 2. The biennial renewal fees specified in Section 1(6), (7),

(8), (9), (10), and (11) of this regulation are payable as follows:

(1) Licensees for life, health, or life and health insurers[,~~or fraternal benefit societies~~] shall renew their licenses on or before March 31 in odd numbered years and biennially thereafter; and

(2) Licensees for casualty, marine and transportation, property, surety, mortgage guaranty, [~~or~~] multiple line insurers, risk retention agent, fraternal benefit societies, or reinsurance intermediaries shall renew their licenses on or before March 31 in even numbered years and biennially thereafter.

Section 3. When a statute or administrative regulation requires payment of a fee as provided in KRS 304.4-010, it refers to a fee as specified in this administrative regulation.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 12, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on scheduled for August 22, 1994, at 11 a.m. (ET), in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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. Written comments must be received prior to 11 a.m. (ET), on August 22, 1994, in order to receive consideration. 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: Sharron S. Burton, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032 Ext. 249.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

Need for the proposed amendment: The Commissioner of Insurance is to prescribe those services for which fees shall be charged and the amounts of such fees. In 1992, under KRS 304.9-700 to 304.9-759, the Commissioner of Insurance began regulating reinsurance intermediaries. The department has charged a licensing fee for reinsurance intermediaries and needs to properly state those fees and the time period for those fees. In KRS 304.4-015, fraternal benefit societies are to pay biennial renewal fees in even years. However, in 806 KAR 4:010 Section 2(1), fraternal benefit societies pay their renewal fees in odd numbered years. This amendment will bring the administrative regulation into compliance with KRS 304.4-015. Under 1994 Ky. Acts ch. 262, §4(4), an administrative agency must charge a fee based on costs for public records used for commercial purposes. Therefore, the fees for commercial records must be amended in 806 KAR 4:010(20). The department has been charging fees for risk retention agent licenses and needs to properly state this license fee in the administrative regulation. Under 1994 Ky. Acts ch. 496, §2(5), the department must charge a fee that is consistent with fees charged by other state agencies for copies.

Type and number of entities affected: At this time, the Department of Insurance administers approximately 336 fraternal benefit society agent licenses and 1 risk retention agent licenses. The department regulates 2 reinsurance intermediaries. Many entities request records for commercial purposes.

a. Direct and indirect cost or savings to those affected:

1. First year: Reinsurance intermediaries, fraternal benefit societies, and risk retention agents are already paying the appropriate renewal fees to the department. Persons who request public records for a commercial purpose may have some savings for specific records.

2. Continued cost or savings: The continued cost or savings will be the same as the first year.

3. Additional factors increasing or decreasing costs: No additional cost or savings is expected.

b. Reporting and paperwork requirements: There would be no additional reporting or paperwork requirements.

Effects on the promulgating administrative body:

a. Direct and indirect cost or savings:

1. First year: The Department of Insurance has already been accepting biennial fees from reinsurance intermediaries and fraternal benefit societies, and risk retention agents in accordance with the proposed amendment for the administrative regulation. The department may incur additional personnel and operating cost if the department becomes overburdened with requests for public records for commercial purposes.

2. Continued cost or savings: The department will have continued costs if the requests for records for commercial purposes increases.

3. Additional factors increasing or decreasing costs: None

c. Reporting and paperwork requirements: The Department of Insurance will continue to collect and process biennial renewal fees from these organizations and agents. If the department has additional requests for public records for commercial purposes, the department will have a great amount of additional paper work to fulfill requests.

Assessment of Anticipated Effect on State and Local Revenues: The lower fees for public records for commercial purposes may reduce the amount of fees sent to the general fund.

Assessment of Alternative Methods; Reasons why Alternatives were Rejected: If no amendment with regard fraternal benefit societies is made to this administrative regulation, then the administrative regulation will be in direct conflict with the statute relating to fraternal benefit societies. Also, if no amendment is made, there will be no specific language in the Kentucky Insurance Code to inform the reinsurance intermediaries and risk retention agents of the appropriate fees to be paid and the time for these fees to be paid to the Department of Insurance. The department must charge for the cost of providing public records for commercial purposes to be in compliance with the Open Records Law.

Statutes, Regulations, or Governmental Policies which may Conflict, Overlap, or Duplicate the Proposed Regulation: None

TIERING: Tiering is not used since the proposed administrative regulation should apply to all reinsurance intermediaries, fraternal benefit societies' agents and risk retention agents equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(Proposed Amendment)

806 KAR 5:050. Motor vehicle warranties.

RELATES TO: KRS 304.5-070

STATUTORY AUTHORITY: KRS Chapter 13A, 304.2-110, 304.5-070

NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt administrative regulations necessary for or as an aid of the effectuation of any provision of the Kentucky Insurance Code. KRS 304.5-070(1)(p) authorizes the Commissioner of Insurance to adopt administrative regulations to interpret the provisions of KRS 304.5-070(1)(p). This administrative regulation interprets the 1986 amendment to KRS 304.5-070(1)(p) (1986 Ky. Acts ch. 146). Under 1994 Ky. Acts ch. 375, §1(1)(p), a

warranty service company can be a maker of auto guaranties through a motor vehicle dealer.

Section 1. Definitions. [~~As used in this regulation:~~]

(1) "Authorized insurer" means an insurer holding a certificate of authority from the Commonwealth of Kentucky to transact motor vehicle insurance or insurance to indemnify motor vehicle dealers for the cost of repairs under motor vehicle warranties.

(2) "Motor vehicle dealer" means a motor vehicle dealer licensed pursuant to KRS Chapter 190.

(3) "Motor vehicle warranty" means a contract covering only defects in material and workmanship in exchange for a separately stated charge where it is merely incidental to the business of selling or leasing motor vehicles. [~~automobile guaranty insurance as defined in KRS 304.5-070(1)(p).~~]

(4) "Person" has the meaning set forth in KRS 304.1-020.

(5) "Warranty service company" means a company which issues motor vehicle warranties through a motor vehicle dealer and has an insurance policy with an authorized insurer to assure performance of warranties.

Section 2. Only the following may issue motor vehicle warranties covering Kentucky risks:

(1) Authorized insurers; or

(2) Motor vehicle dealers who meet the conditions of KRS 304.5-070(1)(p) and this administrative regulation; or

(3) Warranty service companies:

(a) Which issue motor vehicle warranties through a motor vehicle dealer, in which the motor vehicle dealer is the seller but not the obligor under the contract; and

(b) Which meet the conditions of KRS 304.5-070(1)(p) and this administrative regulation.

Section 3. Motor vehicle dealers are permitted to sell motor vehicle warranties only if the sale of the motor vehicle warranty is merely incidental to the sale or lease of motor vehicles.

(1) A motor vehicle dealer shall not solicit or sell motor vehicle warranties as to motor vehicles not sold or leased by the motor vehicle dealer.

(2) A [~~No~~] person [~~other than an authorized insurer~~)] may not solicit the general public for the sale of motor vehicles warranties.

Section 4. Motor vehicle dealers are permitted to sell motor vehicle warranties if the obligor of the contract obtains [~~they obtain~~] from an authorized insurer an insurance policy which meets the requirements of KRS 304.5-070(1)(p) for such period of time as such coverage is maintained in full force and effect.

(1) Motor vehicle dealers which market motor vehicle warranties, where the obligor under the contract has [~~have~~] obtained and maintained an appropriate insurance policy from an authorized insurer and has [~~have~~] complied with all other requirements of KRS 304.5-070(1)(p) and this administrative regulation, are deemed to have received a permit to sell motor vehicle warranties.

(2) Motor vehicle dealers selling motor vehicle warranties, where the obligor of the contract has [~~which have~~] not obtained and continuously maintained an appropriate insurance policy from an authorized insurer and are not in compliance with the other provisions of KRS 304.5-070(1)(p) and this administrative regulation, are deemed to have been denied a permit to sell motor vehicle warranties.

Section 5. Nothing in this administrative regulation shall affect warranties provided by motor vehicle manufacturers.

Section 6. Incidental Benefits Arising from Defects in Material or Workmanship. Motor vehicle warranties may provide incidental benefits arising from defects in material or workmanship, such as reimbursement for the cost of towing and substitute transportation.

Section 7. Effective Date. This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

DON W. STEPHENS, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 12, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on scheduled for August 22, 1994, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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. Written comments must be received prior to 9 a.m. (ET), on August 22, 1994, in order to receive consideration. 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: Sharron S. Burton, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032 Ext. 249.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

Need for the proposed amendment: An 1994 amendment to KRS 304.5-070(1)(p) (1994 Ky. Acts ch. 375, §1(1)(p)) allows warranty service companies to be makers of automobile guaranties. Therefore, the above administrative regulation must be amended to coincide with the new legislation.

Type and number of entities affected: The Department of Insurance does not have any indication as to how many warranty service companies exist and would be affected.

a. Direct and indirect cost or savings to those affected:

1. First year: Warranty service companies may issue motor vehicle warranties through a motor vehicle dealer. The warranties must be insured through an authorized insurer.

2. Continued cost or savings: The continued cost or savings would be the same.

3. Additional factors increasing or decreasing costs: None

b.Reporting and paperwork requirements: Warranty service companies must be able to demonstrate to the Department of Insurance that their motor vehicle warranties are issued through a motor vehicle dealer. They must also demonstrate that they have obtained an insurance policy from an authorized insurer to assure their performance of the warranty.

Effects on the promulgating administrative body:

a. Direct and indirect cost or savings:

1. First year: The Department of Insurance may incur costs to investigate any complaints concerning warranty service companies issuing motor vehicle warranties.

2. Continued cost or savings: The continued costs or savings will depend on whether department receives complaints concerning warranty service companies.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: The department may have to maintain case files should the department receive complaints

on warranty service companies.

Assessment of anticipated effect on state and local revenues: None

Assessment of alternative methods; reasons why alternatives were rejected: The department must make its administrative regulations comply with amended legislation. Therefore, the department had no alternative but to bring its administrative regulation, 806 KAR 5:050 into compliance with 1994 Ky. Acts. ch. 375, §(1)(p).

Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None

TIERING: Tiering is not used since the proposed administrative regulation should apply to all warranty service companies equally.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. This product was approved by the Plumbing Code Committee at their May 9, 1994 [~~November 8, 1993~~] meeting.

Section 1. Definitions. (1) "APML" means the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" means the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) Any part or material shall not be used in drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from

the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through eighteen (18) inches for underground storm water drainage within a building.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 7, 1994
FILED WITH LRC: July 12, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1994 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 August 18, 1994, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:

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

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Epidemiology
(Proposed Amendment)

902 KAR 2:090. Tuberculosis testing.

RELATES TO: KRS 158.037, 211.180, 214.034, 215.520
STATUTORY AUTHORITY: KRS 194.050, 211.090

NECESSITY AND FUNCTION: KRS 211.180 mandates the Cabinet for Human Resources to implement a statewide program for the detection, prevention, and control of communicable diseases. KRS 214.034 requires the establishment of tuberculosis testing schedules for children by the Cabinet for Human Resources. KRS 158.037 requires the establishment of reporting regulations for tuberculin skin test results in children attending all public or private elementary or secondary schools by the Cabinet for Human Resources. This administrative [~~The~~] regulation mandates tuberculin testing for all first time school enrollees in private and public schools in Kentucky and describes the methods for reporting tuberculin skin test

results on children to local health departments.

Section 1. Definitions. (1) "Child" means an individual under the age of eighteen (18) years.

(2) "Tuberculin skin test" means the intracutaneous injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique or multiple puncture, but preferably the former.

(3) "First-time enrollee" means a child entering private or public school (primary school, entry level [~~kindergarten~~] through 12th grades) in the Commonwealth, the child never having attended school in the Commonwealth previously.

Section 2. A [~~Each~~] first-time enrollee in public or private school in the Commonwealth shall be tested for tuberculosis by tuberculin skin test within eighteen (18) months [~~one (1) year~~] prior to entering the public or private school. A child who has not been tested prior to entering the public or private schools may be permitted to attend class for a period of time not to exceed thirty (30) days, as approved in writing by the health officer of the local health department having jurisdiction. Further attendance shall be conditioned upon presentation of proof of having been tested for tuberculosis in accordance with Section 3 of this administrative regulation.

Section 3. (1) A [~~Each~~] first-time enrollee in a public or private school shall present a valid certificate approved by the Cabinet for Human Resources and signed by the attending physician or by the health officer of the local health department having jurisdiction, containing the date of the most recent tuberculin skin test, the type of skin test given (Mantoux, multiple puncture or other), and the millimeters of induration at forty-eight (48) to seventy-two (72) hours posttesting. The test shall have been read by a health professional. The certificate shall become a permanent part of the child's school health record.

(2) If [~~When~~] tuberculin skin testing is medically contraindicated according to the written statement of an attending physician or of the health officer of the local health department having jurisdiction, the child shall receive a chest x-ray. The only exception to this requirement is a child who can present documentation of a completed course of isoniazid prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease.

Section 4. A [~~Each~~] public or private school shall, within sixty (60) days of the beginning of each school year, forward to the local health department having jurisdiction in the area a report containing:

(1) A list showing:

(a) The name;

(b) Grade;

(c) Type of tuberculin skin test performed; and

(d) The millimeters of induration for all first-time enrollees who had any induration at forty-eight (48) to seventy-two (72) hours indicated on their tuberculin skin testing certificate and all first-time enrollees who were excepted in accordance with Section 3(2) of this administrative regulation; and

(2) The number of first-time enrollees by school grade; and of those, the number tested.

Section 5. If [~~When~~] the prevalence of significant tuberculin reactors among first-time enrollees at any school exceeds or equals five-tenths (0.5) of one (1) percent, additional testing may be required by the health officer of the local health department having jurisdiction or the Cabinet for Human Resources. Results of the testing shall be provided the local health department having jurisdiction. Additional control measures may then be required at the sound discretion of the health officer of the local health department having jurisdiction or the Cabinet for Human Resources in order to protect the public health.

RICE C. LEACH, MD, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 6, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994 at 9 a.m., in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Reginald Finger

(1) Type and number of entities affected: Approximately 22,000 children.

(a) Direct and indirect costs or savings to those affected:

1. First year: Approximately $154,880 to parents/agencies paying for testing five-year olds again (22,000 x $7 per test).

2. Continuing costs or savings: Same - annually.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Will affect all providers equally.

(b) Reporting and paperwork requirements: Reduction in number of test results reported and maintained.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:no 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:

(4) Assessment of alternative methods; reasons why alternatives were rejected: The amendment of the administrative regulation is the only method to establish new testing schedules in compliance with KRS 214.034.

(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. Parents and providers will be affected equally.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Maternal and Child Health
(Proposed Amendment)

902 KAR 4:030. Newborn screening for inborn errors of metabolism and other inherited disorders [~~Tests for inborn errors of metabolism~~].

RELATES TO: KRS 214.155

STATUTORY AUTHORITY: KRS 194.050, 211.090, 214.155, HB 516 Part IIA #42 of the 1988 GA

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 214.155 to require that infants [~~to~~] be tested for inborn errors of metabolism, such as [~~including but not limited to~~] phenylketonuria (PKU), and to establish a schedule of fees to cover the actual costs to the cabinet for testing samples for [~~errors of~~] inborn errors of metabolism. The purpose of this administrative regulation is to require that infants [~~to~~] be tested for phenylketonuria (PKU), galactosemia, sickle cell disease, and hypothyroidism, which

are inborn errors of metabolism or other inherited disorders, and to establish the schedule of fees to cover actual costs of testing.

Section 1. Tests for inborn errors of metabolism or other inherited disorders for newborn babies shall be completed as follows: [:]

(1) Except as [otherwise] provided in KRS 214.155(2), the administrative officer, or other person in charge of the hospital or [other] institution caring for infants twenty-eight (28) days or less of age, and the attending physician or midwife shall [cause to] have administered to every [such] infant in its [or his] care a blood test to detect phenylketonuria, galactosemia, sickle cell disease, and hypothyroidism. If [In the event] a baby is not born in a hospital or institution, the attending physician or midwife shall be solely responsible for causing these [such] tests to be administered at no less than forty-eight (48) hours or more than seven (7) days of life.

(2) A capillary blood specimen shall be obtained from each infant before he [or she] leaves the hospital regardless of the age of the infant. All infants screened prior to forty-eight (48) hours of life shall be rescreened for phenylketonuria (PKU) and congenital hypothyroidism prior to three (3) weeks of life.

(3) If [When] an infant is transferred from one (1) hospital to another during the newborn hospital stay, the following rules shall apply:

(a) If the infant is forty-eight (48) hours of age or more at the time of transfer to another hospital, testing for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism shall be the responsibility of the sending hospital.

(b) It shall be the responsibility of the receiving hospital to ensure testing for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism if the infant is less than forty-eight (48) hours of age at the time of transfer.

(4) A capillary blood specimen shall be obtained on [the seventh] day seven (7) of life from all infants that are still hospitalized and ill, premature, or [infants] receiving parenteral feeding [still hospitalized] on that day, for the purpose of screening for phenylketonuria (PKU), galactosemia, sickle cell disease, and congenital hypothyroidism, unless the [particular] infant has already been tested in accordance with subsection (3) of this section.

(5) A repeat capillary blood specimen shall be obtained from all infants who were being treated with antibiotics when the original specimen was obtained or within the previous five (5) days. This repeat specimen shall be obtained five (5) to seven (7) days after completing the antibiotic treatment for [the purpose of] screening for phenylketonuria (PKU) and galactosemia.

(6) A repeat capillary blood specimen shall be obtained for [the purpose of] screening for phenylketonuria (PKU) from all infants who received parenteral feeding prior to the initial screening. [For formula-fed infants,] The specimen shall be obtained between forty-eight (48) and seventy-two (72) hours after initiation of feedings. [For breast-fed infants, the specimen shall be obtained between seven (7) and fourteen (14) days after initiation of feedings.]

(7) A repeat capillary blood specimen shall be obtained from all infants who received transfusions prior to the initial screening, according to the following schedule:

(a) Forty-eight (48) to seventy-two (72) hours after transfusion rescreen for phenylketonuria (PKU) and congenital hypothyroidism.

(b) Sixty (60) to sixty-five (65) days after transfusion rescreen for galactosemia.

(c) 120 days after transfusion rescreen for sickle cell disease.

(8) [The] Capillary blood specimens required in subsections (1) through (6) of this section shall be obtained by a heel stick. [and the] Blood from the heel stick shall be applied directly to filter paper.

(9) [All] Specimens obtained as directed in subsections (1) through (7) of this section shall be mailed or sent to the approved testing laboratory within twenty-four (24) hours of collection of the specimen.

(10) Hospitals and institutions may submit blood samples to the Cabinet for Human Resources, Department for Health Services, Division of Laboratory Services, 100 Sower Boulevard, Suite 204, [275 East Main Street,] Frankfort, Kentucky 40621. The Department for Health Services, Division of Laboratory Services, shall report positive results of tests for inborn errors of metabolism as required by KRS 214.155 on behalf of the [such] hospitals and institutions. Hospitals and institutions may conduct their own testing program, within the institution or through a licensed medical laboratory. [, in which event] The cabinet shall be notified and the laboratory procedures approved. A hospital or licensed medical laboratory may be required by the cabinet to demonstrate its proficiency in the performance of [such] tests. Hospitals and institutions which conduct their own testing program or contract with a licensed medical laboratory shall report positive test results within twenty-four (24) hours of testing to the attending physician and shall report positive test results to the Department for Health Services no later than two (2) working days after the date of testing.

(11) All hospitals that conduct their own testing for congenital hypothyroidism within the institution or through a licensed medical laboratory shall [must] perform a TSH on the same blood samples whose initial T4 test resulted in a low value level.

(12) All hospitals which do their own testing or send their blood specimens to a licensed medical laboratory for testing shall complete semiannual or other reports concerning the [such] testing [as] requested by the Division of Laboratory Services or the Division of Maternal and Child Health.

(13) The Cabinet for Human Resources may share test results with physicians and practitioners other than the attending physician, who inform the cabinet that they are treating the infant who received the test, and with the local health department in the infant's county of residence.

(14) Hospitals or other authorized institutions or individuals submitting blood samples to the Cabinet for Human Resources shall be assessed for each test according to the following schedule:

PKU only	$2.50 per test
Galactosemia only	$2.50 per test
Hypothyroidism	$6.00 per test
Sickle cell disease only	$3.50 per test
Combination test for all four [three]	$14.50 [11.00]

(15) All fees due the Cabinet for Human Resources shall be collected through a monthly billing system.

RICE C. LEACH, MD, Commission
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 6, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Buildings, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Lynne Flynn

(1) Type and number of entities affected: Approximately 400 submitters of specimens to be screened for PKU, galactosemia, sickle cell disease, and hypothyroidism. This number includes hospitals, health departments, and nurse midwives. Approximately 53,000 infants tested each year. All changes are to conform with KRS Chapter 13A.

(a) Direct and indirect costs or savings to those affected:

1. First year: $3.50 fee per each infant tested.

2. Continuing costs or savings: $3.50 fee for each infant tested.

3. Additional factors increasing or decreasing costs (note any effects 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: $16,000 for equipment.

2. Continuing costs or savings: All continuing costs covered by $3.50 fee.

3. Additional factors increasing or decreasing costs: All additional costs covered by $3.50 fee.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. Tiering does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.170, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. The purpose of this administrative regulation is to provide for definitions of terms used in administrative regulations 902 KAR 8:050 through 902 KAR 8:140 that describe the various components of a personnel administration program applicable for local health departments established under the provisions of KRS Chapter 212.

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

(1) "Agency" is defined by 1994 Acts, ch. 336, Sec. 1. [~~means a local health department established under the provisions of KRS Chapter 212, except for a health department in a county containing a city of the first class, an urban-county health department, or an independent district health department.~~]

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

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

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

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

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

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

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

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

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

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

(10) "Classification plan" is defined by 1994 Acts ch. 336, Sec. 1. [~~means the system of assigning positions to individual classes based on the duties performed.~~]

(11) "Compensation plan" is defined by 1994 Acts ch. 336, Sec. 1. [~~means a series of salary ranges to which classes of positions are assigned so that classifications evaluated by the department as approximately equal may be assigned to the same salary range.~~]

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

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

(14) "Council" is defined by 1994 Acts ch. 336, Sec. 1. [~~means the Local Health Personnel Advisory Council appointed by the Secretary of the Cabinet for Human Resources under the provisions of 902 KAR 8:050.~~]

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

(16) "Department" is defined by 1994 Acts ch. 336, Sec. 1. [~~means the Department for Health Services within the Cabinet for Human Resources.~~]

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

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

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

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

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

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

(23) "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) pay periods, when an emergency makes it impractical or impossible to fill the

position through standard appointment procedures.

(24) "Excessive absenteeism" means absences from the employee's work station that cause the irregular attendance with or without approval of the agency. Absences may include tardiness, leaving early, abuse in the use of sick leave, abuse in the use of annual leave, violating agency break policy, or [and] violation of agency lunch policy .

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

(26) "Full-time employee" means an employee who is compensated on a salary basis for a standard biweekly pay period.

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

(28) "Job description" means a written description for each classification setting forth the title of the class, the characteristics of the work, the minimum requirements, and the special requirements, including any physical standards deemed necessary to satisfactorily do the work.

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

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

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

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

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

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

(35) "Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked do not average 100 hours of work per month.

(36) "Part-time 100 hour employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average 100 hours per month.

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

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

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

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

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

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

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

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

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

RICE C. LEACH, MD, Commission
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 5, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under the provisions of KRS Chapter 212, excluding the Louisville-Jefferson County, the Lexington-Fayette County, and the Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs or savings for this administrative regulation as it establishes definitions which are used in 902 KAR 8:050 through 902 KAR 8:140.

1. First year: See (1)(a)

2. Continuing costs or savings: See (1)(a)

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors were identified

(b) Reporting and paperwork requirements: No reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: The regulation provides definition of terms so there would be no effect on the promulgating agency.

(a) Direct and indirect costs or savings:

1. First year: There is no cost incurred by the administrative regulation.

2. Continuing costs or savings: No continuing costs or savings. See (2)(a)1.

3. Additional factors increasing or decreasing costs: No additional factors were identified.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There is no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this administrative regulation provides definition of terms used in administrative regulation 902 KAR 8:060 through 902 KAR 8:140.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The administrative regulation defines terms which are used in several regulations governing the

merit system for local health departments in Kentucky. The definitions would be applied and used by all health departments.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation provides for the classification and compensation plans for local health departments. The classification plan provides position classification descriptions which describe the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications that are necessary or desirable for the satisfactory performance of the duties of the various classes. The compensation plan provides salary schedules for the various classes with the salary of each class consistent with the functions outlined in the job specifications and provides requirements which must be met for salary adjustments for employees.

Section 1. Classification Plan. (1) A comprehensive position classification plan shall be established by the department with the advice of the Local Health Department Employment Personnel [~~Advisory~~] Council and the local health departments.

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

(a) A title; [~~and~~]

(b) A description of the duties and responsibilities; [~~and~~]

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

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

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

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

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

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

(7) The department shall:

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

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

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

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

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

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

(a) Five (5) percent; or

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

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

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

Section 2. Compensation Plan. (1) The department shall establish a compensation plan with the advice of the Local Health Department Employment Personnel [~~Advisory~~] Council and the local health departments. The plan shall take into consideration the following:

(a) Financial conditions of the agencies; [~~and~~]

(b) Experience in recruiting for positions; [~~and~~]

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

(d) Benefits received by employees; and

(e) Consistency in application among local health departments.

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

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

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

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

minimum entrance salary.

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

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

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

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

(a) Additional qualifications acquired by the employee; [~~or~~]

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

(c) Compensation plan changes.

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

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

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

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

(a) Documented unsatisfactory work performance;

(b) Excessive absenteeism;

(c) Excessive tardiness;

(d) Record of disciplinary action; or

(e) Failure to cooperate.

(4) An employee whose annual increment is denied shall be notified by the appointing authority at least two (2) weeks prior to the anniversary date. The employee action for which the annual increment was denied may lead to disciplinary action if not corrected.

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

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

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

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

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

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

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Returns from military leave;

(g) Is reclassified.

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

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

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

(10) A lump sum payment shall not exceed eight (8) percent of the employee's current annual salary within a one (1) year consisting of twenty-six (26) full pay periods based on the annual increment date.

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

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

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

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

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

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

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

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

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

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

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

(16) An in-range adjustment shall be calculated by multiplying the percentage amount of the in-range adjustment times the difference between the minimum and maximum of the respective grade of the employee's classification and adding to the employee's salary.

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 5, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: Forty-eight (48) Local Health Departments established under KRS 212, excluding Louisville-Jefferson County, Lexington-Fayette County and Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected: The regulation provides for a classification plan used to describe the various job duties and responsibilities of the approximately 2800 LHD employees. The regulation also establishes a compensation plan and governs salary adjustments for employees. The administrative agency would incur costs for supportive staff already assigned to administer this regulation.

1. First year: There are no direct and indirect costs associated with this regulation for local health departments.

2. Continuing costs or savings: See 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: Health departments would be required to request salary adjustments and classification changes using automated personnel system to state administrative agency.

(2) Effects on the promulgating administrative body: Administrative body would be required to maintain classification plan and document local health department employee salary adjustments.

(a) Direct and indirect costs or savings: See (1)(a)1.

1. First year: The regulation would not have any additional effects as it is an ongoing administrative activity.

2. Continuing costs or savings: Same as (2)(a)1.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Requires agency to maintain classification plan and permanent employee records for actions submitted by local health departments.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. This regulation would apply to all local health departments and are applied uniformly.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation establishes procedures and standards for the recruitment, examination, and certification of individuals for potential employment by local health departments.

Section 1. Recruitment of Eligible Individuals. (1) An agency that desires to fill a position, shall announce the position as provided by the provisions of this section, and may announce the position through additional means that are best suited to attract qualified persons.

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

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

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

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

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

(d) The minimum qualifications required; [~~and~~]

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

(f) Veteran's preference; [~~and~~]

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

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

(i) Other special requirements of federal and state legislation such as the American with Disabilities or Civil Rights Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) A vacancy in an agency may be filled by promotion of a qualified permanent employee.

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

(9) A promotional competitive examination shall be given under

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

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

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

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

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

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

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

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

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

(e) An eligible receives a probationary appointment; [or]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 5, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson County, Lexington-Fayette County, and the Northern Kentucky Health Department.

(a) Direct and indirect costs or savings to those affected:

1. First year: Costs incurred would be for advertising, in recruiting potential employees to fill vacant positions, and interviewing potential employees.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: Sending notices of recruitment efforts to administrative agency and notification of disposition of certification of eligibles.

(2) Effects on the promulgating administrative body: The administrative agency would be responsible for reviewing all applications submitted, maintaining appropriate tests for the various job classifications, maintaining applicant records and communications to applicants.

(a) Direct and indirect costs or savings:

1. First year: Costs are already incurred by the administrative agency.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Maintain files on applicants, maintain examinations, proper correspondence with applicants, issue certification of eligibles.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes policies for the local health departments which are applied uniformly.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation describes the various categories of employment and types of appointments permitted under the merit system, the standards under which the appointments are made and requires a probation period following appointment or promotion. This administrative regulation describes an evaluation process to measure employee performance of job duties and responsibilities. Requirements for employee resignations and the process of lay off is also addressed.

Section 1. Initial Appointments. The appointing authority of a local health department shall make an initial appointment of an eligible only from a certification of eligibles issued by the department. The appointing authority or other designated supervisory staff[,] shall interview and examine applicants certified and shall report the final selection to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Increased work activity of a seasonal nature; [~~or~~]

(b) Work study or job training programs; [~~or~~]

(c) Special projects; or [~~and~~]

(d) Summer employment.

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

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

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

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

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

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

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

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

(3) The appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period as to one (1) of the following actions:

(a) The employee has satisfactorily completed the initial probationary period based on a performance evaluation, and permanent status has been confirmed; [~~or~~]

(b) The employee has not successfully performed the duties and completed the probationary period as evidenced by the required performance evaluation, and shall be dismissed without the right of appeal and hearing; or

(c) If the initial probationary period will be extended because of absences during the probationary period due to medical reasons which cause the employee to be absent from work for twenty (20) days or more during the probationary period.

(4) The department, with the advice of the Local Health Department Employment Personnel [~~Advisory~~] Council, may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for specific classifications, for example, the health environmentalist classification.

(5) If the employee is to be dismissed during the initial probationary period, the employee shall be notified at least fourteen (14) days prior to the effective date of dismissal and prior to the expiration of the probation period. The employee may be placed on a register of eligibles by the department if the action is appropriate. The employee shall not be certified to the agency from which separated unless the agency requests otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Seniority of employees; [~~and~~]

(b) Results of employee performance evaluation[~~(s)~~]; [~~and~~]

(c) Qualification of employees; and

(d) Type of appointment or source of funding.

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

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

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort,

Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson, Lexington-Fayette County, and Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected:

1. First year: There would be no costs associated with this regulation, as this regulation specifies the terms of appointment for local health departments, serving a probationary period and performance appraisal.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: Health Departments would be required to report new appointments, individuals successfully completing probationary periods and successfully completing annual performance evaluation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs would be incurred by the administrative body as this is an ongoing cost.

1. First year: See (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: Notification of health departments as the employees who need performance evaluation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes personnel policies for the local health departments which are to be applied uniformly.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation describes the provisions and requirements for promotions, transfers, and demotions of local health department employees.

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

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

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

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

(b) Three (3) percent of the employee's current salary if the promotion is to a class having a one (1) grade higher salary range; or

(c) Six (6) percent of the employee's current salary if the promotion is to a class having a salary range which is two (2) or more grades higher.

(4) An employee who satisfactorily completes the required promotional probationary period of thirteen (13) pay periods, as documented by the performance evaluation, shall receive a three (3) percent increase in salary.

(5) A permanent employee promoted from a classified position to an unclassified position retains his status in the classified service. If separated from an unclassified position following promotion, an employee shall revert to the class in which he previously held status. If there is no vacancy in that class, the employee may be reverted to a position for which the employee is qualified and certified by the department. Time served in an unclassified position shall count towards years of service and seniority.

Section 2. Transfers. (1) A transfer of a permanent employee from a position in one (1) organizational subdivision to a position of the same class in another organizational subdivision within an agency, may be made at any time by the appointing authority.

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

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

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

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

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

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

(a) Documented unsatisfactory employee performance during the

promotional probationary period; [or]

(b) An employee, with the approval of the appointing authority, voluntarily requests a demotion to a position having a lower salary range and less responsibilities and duties; [or]

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

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

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

(3) The salary of an employee who voluntarily requests a demotion shall be reduced by three (3) percent for each grade decrease if the demotion is to a classification resulting in a decrease of three (3) or more grades.

(4) Except as provided in subsection (6) of this section, the salary of an employee who is demoted because of documented disciplinary problems or inability to perform the duties and responsibilities required of the position, shall be reduced to a salary level determined by adding the total percentage difference, as described by the compensation plan, between the employees current grade level and the grade of the classification to which the employee is demoted.

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

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

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

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson County, Lexington-Fayette County, and Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected: This regulation would not have any direct costs by local health departments as it establishes policy for the respective budgets of the regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: Health departments would request approval for respective actions and maintain records of approved actions.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The direct costs incurred are included in the biennium budget and are primarily costs for administrative staff receiving and processing specific actions governed by the regulation.

2. Continuing costs or savings: Same as (2)(a)1.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues; costs have been included in budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes personnel policies for the local health departments and their employees which are to be applied uniformly.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. The administrative regulation governs separations and disciplinary procedures applicable for local health departments. Included are requirements for progressive disciplinary steps, prediciplinary action procedures, and an appeal process.

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

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

(3) Situations that may warrant disciplinary action are situations such as [include, but are not limited to the following]:

(a) Inefficiency or incompetency in the performance of duties;
(b) Negligence in the performance of duties;
(c) Careless, negligent, or improper use of local health department property or equipment;
(d) Failure to maintain satisfactory and harmonious working relationships with the public and coworkers;
(e) Habitual improper use of sick leave and other leave privileges;
(f) Habitual pattern of failure to report for duty at the assigned time and place;
(g) Failure to obtain or maintain a current license or certificate or other qualifications required by law or rule as a condition of continued employment;
(h) Gross misconduct or conduct unbecoming an employee;
(i) Willful abuse or misappropriation of funds, property, or equipment;
(j) Conviction of a felony;
(k) Falsification of an official document relating to or affecting employment;
(l) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, or that would interfere with the ability of management to manage;
(m) Damage or destruction of agency property;
(n) Abuse towards patients, coworkers, or the public in the performance of duties;
(o) Refusal to carry out a reasonable and proper assignment from an authorized supervisor (insubordination);
(p) Reporting to work under the influence of alcohol or illegal drugs, or partaking on the job;
(q) Sleeping or failure to remain alert during working hours;
(r) Violation of confidential information policies of the agency;
(s) Prohibited political activity; and
(t) Unauthorized absence or absence for any period of working without notifying supervisor.

Section 2. Predisciplinary Action Hearing. (1) Except as provided in subsection (7) of this section, prior to demotion, suspension, or dismissal, a classified employee with status shall be notified in writing of the intent of the agency to demote, suspend, or dismiss the employee. The notice shall also state the following:
(a) The specific reasons for the demotion, suspension, or dismissal including:
1. The statutory, regulatory, or agency policy violation; or
2. The specific action or activity on which the intent to demote, suspend, or dismiss is based; and
3. The date, time, and place of the action or activity; and
4. The name of the parties involved.
(b) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.
(2) No later than five (5) working days after receipt of the notice of intent to demote, suspend, or dismiss, excluding the day the employee receives the notice, the employee may request to appear to reply to the appointing authority.
(3) The meeting shall be held six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.
(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.
(5)(a) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be notified in writing fourteen (14) days prior to the action of:
1. [~~(a)~~] The effective date of the demotion, suspension, or dismissal; and
2. [~~(b)~~] The statutory, regulatory, or agency policy violation; or
3. [~~(c)~~] The specific action or activity on which the demotion, suspension, or dismissal is based; and
4. [~~(d)~~] The date, time, and place of the [~~such~~] action or activity; [~~and~~]
5. [~~(e)~~] The name of the parties involved; [~~and~~]
6. [~~(f)~~] That the employee may appeal the demotion, suspension, or dismissal to the Local Health Department Employment Personnel Advisory Council no later than fifteen (15) days after the effective date of the demotion, suspension, or dismissal.
(b) The appointing authority shall provide the employee with the appeal request form.
[~~(6) If the appointing authority determines that the employee shall be demoted, suspended, or dismissed, the employee shall be provided with the Appeal Request Form at the same time of the notification contained in subsection (5) of this section.~~]
(6) [~~(7)~~] All appeals shall be submitted on Form CH-41, "Request for Appeal", [~~the appeal request form,~~] dated April 1, 1993. Form CH-41, "Request for Appeal", [~~The appeal request form~~] is incorporated by reference and may be obtained, reviewed, and copied at the Department for Health Services, Division of Local Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, during the office hours of 8 a.m. and 4:30 p.m.
(7) [~~(8)~~] Upon determining that an employee has committed a flagrant violation and there is a need to diffuse a presently dangerous or disruptive situation, a supervisor may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken. A pretermination hearing shall be provided as soon as practicable after removal. The employee may be placed on leave using accumulated leave or on immediate suspension without pay.

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 5, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson
(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson County, Lexington-Fayette County, and Northern Kentucky District Health Department.
(a) Direct and indirect costs or savings to those affected:
1. First year: The regulation establishes general procedures for disciplining local health department employees who violate agency policy.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors were identified.
(b) Reporting and paperwork requirements: Effected agencies would be required to report disciplinary actions (copy of charges).
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Monitoring of disciplinary action to ensure compli-

ance with regulation.

2. Continuing costs or savings: Same as (2)(a)1

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Maintain disciplinary actions in employee folder, preparation of findings of hearings.

(3) Assessment of anticipated effect on state and local revenues: Expected costs are included in existing budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes personnel policies for the local health departments and their employees which are to be applied uniformly.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170 and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation provides for a process whereby employees may appeal specific disciplinary actions.

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

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

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

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

(5) A request for an appeal, provided for under this section, shall be submitted in writing using Form CH-41, "Request for Appeal" (July 1, 1994), [~~the appeal request form,~~] incorporated by reference in administrative regulation 902 KAR 8:100, Section 2(6).

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

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

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

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

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

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

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

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson County, Lexington-Fayette County, and Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected:

1. First year: The regulation establishes general procedures for disciplining local health department employees who violate agency policy. Costs would be associated with hearing procedures, including any legal fees and staff time.

2. Continuing costs or savings: continuing costs would be dependent on the number of hearings requested and the associated costs involved.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Additional costs would be dependent on the number of hearings requested and the associated costs involved.

(b) Reporting and paperwork requirements: Effected agencies would be required to report disciplinary actions (copy of charges).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Monitoring of disciplinary actions to ensure compliance with regulation and costs for hearing officer or Merit System Council members to hear appeal(s).

2. Continuing costs or savings: Same as (2)(a)1.

3. Additional factors increasing or decreasing costs: Cost would vary depending on number of hearings.

(b) Reporting and paperwork requirements: Maintain disciplinary actions in employee folder, preparations of findings of hearings.

(3) Assessment of anticipated effect on state and local revenues: Expected costs are included in existing budget.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes personnel policies for the local health departments and their employees which are to be applied uniformly.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs the leave provisions applicable for employees of local health departments. These provisions address hours of work, earning of annual and sick time, holiday schedules, other leave provisions and the earning of compensatory time.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The maximum amount of annual leave earned by full-time employees that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

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

(7) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

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

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

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

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

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

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

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

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

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

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

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

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

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

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

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

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

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

(b) Is disabled by sickness or injury; [~~or~~]

(c) Is required to provide personal care for a sick or injured member of his immediate family; [~~or~~]

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

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

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

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

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

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

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

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

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

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

(d) [~~Any~~] Special considerations that the physician recommends be applied to accommodate the employee once released to return to work.

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

(a) The employees health might jeopardize others; or

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

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

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

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

(11) Sick leave may be utilized in cases of absence due to illness

or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. Sharing of Sick Leave. (1) An employee who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee who is authorized to receive sick leave.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) An appointing authority, with the approval of the department, may grant a leave of absence with or without pay for a period not to

exceed twenty-six (26) pay periods for the following purposes:

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

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

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

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

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

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

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

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

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 16. Earning of Compensatory Time. (1) A full-time employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for all time worked that the employee does not receive overtime pay subject to the provisions of the Fair Labor Standards Act, 29 USC 206, and Kentucky Wage and Labor Law KRS Chapter 337. The maximum amount of compensatory time that can be accumulated shall be 200 hours.

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

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

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty (30) hour increments.

(3) An agency, with the approval of the department, may elect to compensate employees at the rate of time and one-half (1/2) for each hour worked in excess of forty (40) hours per week.

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

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

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

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

RICE C. LEACH, MD, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson County, Lexington-Fayette County, and Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected:

1. First year: The health department has incurred costs related to this regulation as part of the payroll structure. The costs would include vacation pay, sick time pay, over-time pay when applicable, and other leave policies.

2. Continuing costs or savings: Same as 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): costs would be dependent on normal employee salary increase, number of employees, etc.

(b) Reporting and paperwork requirements: Health departments would be required to report specific absence(s) to administrative agency.

(2) Effects on the promulgating administrative body: Would require the review and approval of specific types of absences and maintain information in employee file.

(a) Direct and indirect costs or savings:

1. First year: Cost in administering the provisions of this regulation are included in the approved budget. The costs cover administering the various leave policies.

2. Continuing costs or savings: Same as (2)(a)1.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Recording approved absences in employee file, maintaining sharing of sick leave requests.

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes personnel policies for the local health departments and their employees which are to be applied uniformly.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No. This regulation is to provide definitions of terms applicable for the personnel program for local health departments.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. The regulation applies to local health departments which are not part of a local government. The local health departments are established under the authority of KRS Chapter 212.

3. State the aspect or service of local government to which this administrative regulation relates. See above.

4. How does this administrative regulation affect the local government or any service it provides? No impact.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. This administrative regulation governs participation of local health department employees in political activities.

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

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

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

(3) Solicit or handle political contributions; [or]

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

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

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

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

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

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

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

(11) Distribute partisan campaign literature or material; [or]

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

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

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson County, Lexington-Fayette County, and the Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected:

1. First year: No costs would be incurred as this regulation only establishes permitted and prohibited political activities of local health department employees.

2. Continuing costs or savings: Same as (1)(a)1.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There are no reporting requirements.

(2) Effects on the promulgating administrative body: No effects on promulgating administrative body as this regulation pertains only to local health department employees. There may be an infrequent interpretative question.

(a) Direct and indirect costs or savings:

1. First year: No costs. See (1)(a)1.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No reporting and paperwork requirement.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes personnel policies for the local health departments and their employees which are to be applied uniformly.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

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

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870
STATUTORY AUTHORITY: KRS 194.050, 211.090, 212.170, 1994 Ky. Acts ch. 336
NECESSITY AND FUNCTION: KRS 211.090, 212.170, and 212.870 requires the cabinet to supervise the personnel functions of local health departments. House Bill 631 provides that the cabinet shall establish policies and procedures for the local health department personnel program. KRS 212.170, 212.230, and 212.870 describes the requirements for and process of appointing a health officer or a health department director for a local health department. This administrative regulation describes the process of appointing a health officer or a health department director of a health department and the provision of coverage or noncoverage of the merit system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 5, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, excluding Louisville-Jefferson County, Lexington-Fayette County, and the Northern Kentucky District Health Department.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no direct or indirect costs associated with this regulation. The regulation establishes a process for appointing physician and nonphysician directors of local health department and their status under the merit system.

2. Continuing costs or savings: Same as 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None have been identified.

(b) Reporting and paperwork requirements: Health Departments would be required to report appointments to the state administrative agency.

(2) Effects on the promulgating administrative body: The administrative body would review qualifications of applicants, approve appointments in conjunction with the Local Board of Health, and maintain an employee record.

(a) Direct and indirect costs or savings:

1. First year: Only costs would be staff time involved in reviewing potential allocations for directors.

2. Continuing costs or savings: Same as (2)(a)1.

3. Additional factors increasing or decreasing costs: No additional factors are identified.

(b) Reporting and paperwork requirements: Only requirements would be to maintain status of directors.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation continues an existing administrative activity.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation establishes personnel policies for the local health departments and their employees which are to be applied uniformly.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(Proposed Amendment)

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 214.175, 216B.010 to 216B.130, 216B.107, 216B.990(1), (2), Chapter 310, 311.241 to 311.247, 311.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals.

Section 1. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority. All members of the medical staff shall be licensed to practice medicine or dentistry in Kentucky, with the exception of graduate physicians who are in the first year of hospital training.

(3) "Registered records administrator" means a person who is certified as a Registered Records Administrator by the American Medical Record Association.

(4) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an Accredited Record Technician by the American Medical Record Association.

(5) "Registered, certified or registry-eligible dietician" means a person who is certified in accordance with KRS Chapter 310.

(6) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of sources of radiation.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(10) "Induration" means a firm area in the skin which develops as a reaction to injected tuberculosis proteins when a person has tuberculosis infection. The diameter of the firm area is measured to the nearest millimeter to gauge the degree of reaction. A reaction of ten (10) millimeters or more of induration is considered highly indicative of tuberculosis infection.

(11) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test must be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(12) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

(13) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs/tissues for transplantation.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and administrative regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at the meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. These reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the

facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person(s) or agency responsible for the postdischarge care of the patient. All pertinent information concerning postdischarge needs shall be provided to the responsible person(s) or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) days of the patient's discharge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department/service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record.

a. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.

(b) Skin testing shall not be required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment.

d. All staff who have never had a skin test of ten (10) or more millimeters induration shall be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, shall receive a chest x-ray unless a chest x-ray within the previous

two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symptoms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with Mycobacterium tuberculosis. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician. If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;

2. Health records;

3. Evidence of current registration, certification, or licensure of personnel;

4. Records of training and experience;

5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

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

2. Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by centers for disease control and Occupational Safety and Health Administration guidelines.

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous by technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet; and

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

l. Linens shall be handled, stored, and processed so as to control

the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location(s) for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission and name of attending medical staff member;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member; and, if given verbally, undersigned by the medical staff member upon his next visit to hospital;

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, or dentist when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. Physician's, or dentist's when applicable, progress notes and nurses' observations;

12. Record of temperature, blood pressure, pulse and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. Discharge summary, including condition of patient on discharge, and date of discharge;

15. In case of death, autopsy findings, if performed; and

16. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ/tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

5. Procedures for the hospital administrator or his designee to report any information about the possible sale, purchase, or brokering of a transplantable organ to the Cabinet for Human Resources, Office of the Inspector General, as required by KRS 311.241(3).

(d) A patient with impending or declared brain death or cardiopulmonary death as determined pursuant to KRS 446.400 should not be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the

direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his[~~/her~~] patient. Other qualified personnel may complete medical histories, perform physical examinations, record findings, and compiler discharge summaries, in accordance with their scope of practice and the hospital's protocols and bylaws. [~~A physician, or other member of the medical staff if so designated in the hospital bylaws, shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.~~]

(c) A complete history and physical examination shall be conducted and recorded within twenty-four (24) hours after admission of the patient.

(d) [~~(c)~~] The attending medical staff member shall state his final diagnosis, assure that [~~complete~~] the discharge summary is completed and sign the records within thirty (30) days following the patient's discharge.

(e) [~~(d)~~] Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(f) [~~(e)~~] There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. Medications or treatments shall not be given without a written order signed by a physician or dentist, when applicable. Telephone orders for medications shall be given only to a licensed practical or registered nurse or a pharmacist and signed by the medical staff member within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. Patient restraints or protective devices, other than bed rails, shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered, certified or registry-eligible dietician either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the

hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. The laboratory shall not perform procedures and tests which are outside the scope of training of the laboratory personnel.

6. Laboratory services shall be under the direction of a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

7. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the [~~minimum~~] proficiency testing and quality control provisions of 42 USC Part 263a. [~~in accordance with Medicare certification requirements.~~]

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and administrative regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated

under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and bookkeeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the physician's, or dentist's when applicable, original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications/prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service/examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying and removing radium element, its disintegration products, and radioactive isotopes.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration/rehabilitation service. If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration/rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department/service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person(s) transporting patient, and time of arrival;

b. History of present complaint and physical findings;
c. Laboratory and x-ray reports, where applicable;
d. Diagnosis;
e. Treatment ordered and details of treatment provided;
f. Patient disposition;
g. Record of all referrals;
h. Instructions to the patient or family for those not admitted to the hospital; and
i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room(s) and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthetist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthetist or a registered nurse anesthetist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a preanesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthetist, or nurse anesthetist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with

adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(i) The hospital shall comply with the provisions of KRS 214.175 in participating in surveys relating to the determination of alcohol or other substance abuse among pregnant women and newborn infants.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

WILLIAM M. GARDNER, Inspector General

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 7, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: 125

(a) Direct and indirect costs or savings to those affected: Difficult to estimate because a hospital may choose whether or not to use other categories of personnel to complete medical histories, perform physical examinations, record findings, and compile discharge summaries.

1. First year: Impossible to determine, but should cause a slight decrease in costs.

2. Continuing costs or savings: Impossible to determine.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: The costs should be minimal.

(a) Direct and indirect costs or savings: $500 for printing new regulation.

1. First year: $500 for printing costs.

2. Continuing costs or savings: No continuing costs should be associated with this amendment since printing costs are a normal agency expense.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This change is necessary in order to reflect the most current utilization of advanced registered nurse practitioner and physician assistants. The laboratory requirement already exists due to the clinical Laboratory Improvement Amendments of 1988.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(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 exists.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. These standards are contained in 42 CFR 482.2 - 42 CFR 482.60.

2. State compliance standards. 902 KAR 20:016, Hospital operation and services; 902 KAR 20:009, Hospital facility specifications.

3. Minimum or uniform standards contained in the federal mandate. Standards relate to personnel, nursing, infection control, provision of services, dietary, laboratory, physical plant, environment, organizational structure, staff responsibility, clinical records, and governing body.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation is written to be implemented along with the federal standards. Federal standards are general in nature, so that specific standards as they relate to these areas do not exist.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards are imposed.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Proposed Amendment)

902 KAR 20:145. Operations and services; rural health clinics.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 authorize the Kentucky Cabinet for Human Resources to regulate health facilities and health services. This administrative regulation sets forth the requirements for the operation and services of rural health clinics.

Section 1. Scope of Operations and Services. A rural health clinic is a health facility located in a rural area that has a shortage of health manpower as provided by the Rural Health Clinic Services Act of 1977 (PL 95-210). Rural health clinics provide a broad range of diagnostic and treatment services, on an outpatient basis for a variety of health conditions. The clinic does not have to be freestanding, but may be an integral and subordinate part of a licensed health facility, or health service.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the clinic and for compliance with federal, state, and local laws and regulations pertaining to the operation of the clinic.

(2) The rural health clinic shall be under the medical direction of a physician.

(3) The licensee shall establish written policies, lines of authority, and designate the person who will be principally responsible for the daily operation of the clinic.

(4) The licensee shall develop patient care policies with the advice of a group of professional personnel that include one (1) or more physicians and one (1) or more advanced registered nurse practitioners or physician assistants. At least one (1) member shall not be a member of the rural health clinic staff. The policies shall include:

(a) A description of the services the rural health clinic provides directly and those provided through agreement;

(b) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and/or patient referral, and the maintenance of health records;

(c) Procedures to be followed in the storage, handling, and administration of drugs and biologicals; and

(d) Procedures for review and evaluation of the services provided by the clinic at least annually.

(5) Personnel. The rural health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner or physician assistant. The clinic shall employ such other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

(a) The physician shall:

1. Be responsible for all medical aspects of the center and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311. In addition, the physician shall provide medical direction, supervision, and consultation to the staff;

2. In conjunction with the advanced registered nurse practitioner(s) or physician assistant(s), participate in developing, executing, and periodically reviewing the rural health clinic's written policies and services;

3. Periodically review the rural health clinic's patient records, provide medical orders, and provide medical care services to patients of the rural health clinic; and

4. Be present for consultation weekly, and be immediately available (within one (1) hour) through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.

(b) The advanced registered nurse practitioner or physician assistant shall:

1. Participate in the development, execution and periodic review of the written policies governing the services the rural health clinic provides;

2. Participate with the physician in periodic review of patient health records;

3. Provide services in accordance with rural health clinic policies, established protocols; and

a. For an advanced registered practitioner, the Nurse Practice Act (KRS Chapter 314), and with regulations promulgated thereunder relating to the practice of an advanced registered nurse practitioner; or

b. For a physician assistant, KRS 311.565 and with administrative regulations promulgated thereunder relating to the practice of a physician assistant:

4. [a.] Arrange for, or refer patients to needed services that cannot be provided at the rural health clinic; and

5. [b.] Assure that adequate patient health records are maintained and transferred when patients are referred.

(6) The rural health clinic shall have linkage agreements or arrangements with each of the following:

(a) Inpatient hospital care;

(b) Physician services in a hospital, patient's home, or long term care facility;

(c) Additional and specialized diagnostic and laboratory services that are not available at the rural health clinic;

(d) Home health agency;

(e) Local health department;

(f) Emergency medical services; and

(g) Pharmacy services.

(7) The rural health clinic shall maintain a clinical record system in accordance with written policies and procedures. A member of the professional staff shall be designated to be responsible for maintaining the records and for insuring that the records are systematically organized, readily accessible and accurately documented.

(8) For each patient receiving health care services, the rural health clinic shall maintain a record that includes, as applicable:

(a) Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient for each patient contact;

(b) Reports of physical examinations, diagnostic and laboratory test results, and consultative findings;

(c) All orders, reports of treatments rendered and medications given and other pertinent information necessary to monitor the patient's progress;

(d) Signatures of the physician or other health care professionals on each order written or treatment provided.

(9) The rural health clinic shall maintain the confidentiality of medical record information and provide safeguards against loss, destruction, or unauthorized use. Written policies and procedures shall govern the use and removal of records from the clinic and the condition for release of information.

(10) Medical records shall be retained for a minimum of five (5)

years or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

(11) The rural health clinic shall carry out or arrange for an annual evaluation of its total program, shall consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

(a) The utilization of clinic services including at least the number of patients served and the volume of services;

(b) A representative sample of both active and closed clinical records;

(c) The rural health clinic's health care policies.

Section 3. Services. (1) The rural health clinic shall develop and maintain written protocols (i.e. standing orders, rules of practice, and medical directives) which apply to services provided by the center and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocols shall further direct data analysis, direct explicit medical action depending upon the data collected and include rationale for each decision made. The protocols shall be signed by the staff physician.

(2) The rural health clinic staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(3) The rural health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

(a) Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

(b) Microscopic examinations of urine sediment;

(c) Hemoglobin or hematocrit;

(d) Blood sugar;

(e) Gram stain;

(f) Examination of stool specimens for occult blood;

(g) Pregnancy tests;

(h) Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

(i) Test for pinworms.

(4) The rural health clinic shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in lifesaving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(5) The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, and where emergency medical services not provided by the clinic can be obtained during and after the clinic's regular scheduled hours of operation.

WILLIAM M. GARDNER, Inspector General
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 7, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994 at 9 a.m., in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Eric Friedlander, Ralph Von Derau, David Crane

(1) Type and number of entities affected: 18

(a) Direct and indirect costs or savings to those affected: This amendment would not necessarily affect costs; it would allow a rural health clinic to hire either an ARNP or a physician's assistant. The differences in salary between these two types of professionals would vary across the state due to geographic variations in availability.

1. First year: Negligible varied savings.

2. Continuing costs or savings: Negligible varied savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: No additional requirements.

(2) Effects on the promulgating administrative body: No effects since the Division of Licensing and Regulation already surveys these entities.

(a) Direct and indirect costs or savings: $500 for reprinting regulations.

1. First year: No additional costs since reprinting of regulation is included in the division's budget requests.

2. Continuing costs or savings: No additional costs since reprinting of regulation is included in the division's budget requests.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional requirements.

(3) Assessment of anticipated effect on state and local revenues: There should be no effects on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These proposed amendments reflect the current federal standards. There is no reason why the state regulations should not reflect the federal standards.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There should be no conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Is tiering applied? No. These are licensure standards and, therefore, apply to all providers equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 491 - rural health clinic.

2. State compliance standards. 902 KAR 20:145 - rural health clinics.

3. Minimum or uniform standards contained in the federal mandate. Personnel, staffing, responsibilities, patient care policies, direct services, evaluation criteria, and service agreements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standards will be imposed. This regulation is being amended to conform with federal standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 100:010. Definitions.

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 20.1003-20.1005

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 CFR 20.1003-20.1005

NECESSITY AND FUNCTION: [~~The Cabinet for Human Resources is authorized by~~] KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. [~~The purpose of~~] This administrative regulation provides [~~is to provide for~~] definitions as applicable to 902 KAR Chapters 100 and 105 [~~other Cabinet for Human Resources radiation administrative regulations~~].

Section 1. Definitions. As used in these administrative regulations, these terms have the definitions set forth below:

(1) "A_1" and "A_2."

(a) "A_1" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A_2" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package;

(c) These values are [~~either~~] listed in 902 KAR 100:070, Section 21, or may be derived under [~~in accordance with~~] the procedure prescribed in 902 KAR 100:070, Section 20.

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(3) [~~(2)~~] "Accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV, such as [~~. It includes, but is not limited to,~~] the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(4) [~~(3)~~] "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(5) [~~(4)~~] "Act" means KRS 211.842 to 211.852.

(6) "Activity" means the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(7) [~~(5)~~] "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(8) "Adult" means an individual eighteen (18) or more years of age.

(9) [~~(6)~~] "Agreement state" means a state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(10) [~~(7)~~] "Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) [~~(8)~~] "Airborne radioactivity area" means[~~:~~

~~(a)~~] a room, enclosure, or [~~operating~~] area in which airborne radioactive material, composed wholly or partly of radioactive material, exists in concentrations:

(a) In excess of the derived air concentrations (DACs) [~~amounts~~] specified in 902 KAR 100:019, Section 44 [~~Table 1, Column 1, of 902 KAR 100:025~~]; or

(b) To a degree that an individual is present [~~A room, enclosure, or operating area in which airborne radioactive material exists in concentrations which, averaged over the number of hours in a week during which individuals are~~] in the area without respiratory protective equipment may exceed during the hours an individual is present in a week, an intake of six-tenths (0.6) percent of the annual limit on intake (ALI) or twelve (12) DAC-hours [~~, exceed twenty-five (25) percent of the amounts specified in Table I, Column 1, of 902 KAR 100:025~~].

(12) [~~(9)~~] "Aluminum equivalent" means the thickness of type 1100 (ninety-nine (99.0) percent minimum aluminum, 0.12 percent copper) aluminum affording the same attenuation, under specified conditions, as the material in question.

(13) [~~(10)~~] "Analytical x-ray systems" means a system which utilizes x-rays for the examination of the structure of materials, such as [~~. This includes, but is not limited to,~~] x-ray diffraction and spectrographic equipment.

(14) "Annual limit on intake (ALI)" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of five (5) rems (0.05 Sv) or a committed dose equivalent of fifty (50) rems (five-tenths (0.5) Sv) to an individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in 902 KAR 100:019, Section 44, Table I, Columns 1 and 2.)

(15) [~~(11)~~] "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(16) [~~(12)~~] "As low as reasonably achievable (ALARA)" means making every reasonable effort to maintain exposures to radiation as far below the dose limits in 902 KAR 100:019 as practical, consistent with the purpose for which the licensed activity is undertaken. ALARA shall take [~~as low as is reasonably achievable taking~~] into account the state of technology, [~~and~~] the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear [~~atomic~~] energy and radioactive materials in the public interest.

(17) [~~(13)~~] "Attenuation" means the reduction of exposure rate upon passages of radiation through matter.

(18) [~~(14)~~] "Attenuation block" means a block or stack, having dimensions twenty (20) cm by twenty (20) cm by three and eight-tenths (3.8) cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(19) [~~(15)~~] "Automatic exposure control" means a device which automatically controls one (1) or more technique factors in order to obtain at a preselected location[~~(s)~~] a required quantity of radiation.

(20) [~~(16)~~] "Authorized user" means a physician, dentist, or podiatrist [~~practitioner of the healing arts~~], identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license that authorizes the medical use of radiaoctive material.

(21) "Background radiation" means radiation from cosmic sources, naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material), and global fallout as it exists in the environment from the testing of nuclear explosive devices. Background radiation does not include radiation from radioactive materials regulated by the Cabinet for Human Resources.

(22) [~~(17)~~] "Beam axis" means a line from the source through the centers of the x-ray fields.

(23) [~~(18)~~] "Beam limiting device" (collimator) means a device which provides a means to restrict the dimensions of the x-ray field.

(24) [~~(19)~~] "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(25) "Bioassay (radiobioassay)" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of

radioactive material in the human body, by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(26) [~~(20)~~] "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver beta or gamma radiation at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(27) [~~(21)~~] "Broker" (waste broker) means a person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(28) [~~(22)~~] "By-product material" means:

(a) Radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute by-product material within this definition.

(29) [~~(23)~~] "Cabinet" means Cabinet for Human Resources, or its duly authorized representatives.

(30) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 11.

(31) [~~(24)~~] "Cabinet x-ray systems" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated. The enclosure may be the architectural structure or may be independent of the architectural structure, but regardless [~~in either case~~], the structure of the enclosure shall provide attenuation of the radiation to meet the requirements of 902 KAR 100:105, relating to the possession, use, and operation of x-ray systems, and shall exclude personnel from its interior during the generation of x-radiation. This definition does not include x-ray systems used by licensed practitioners of the healing arts.

(32) [~~(25)~~] "Calendar quarter" means not less than twelve (12) consecutive weeks nor more than fourteen (14) consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be [~~so~~] arranged so that no day is included in more than one (1) calendar quarter and no day in a one (1) year period is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed [~~by him~~] of determining calendar quarters [~~for purposes of these regulations~~] except at the beginning of a calendar year.

(33) [~~(26)~~] "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(34) [~~(27)~~] "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(35) [~~(28)~~] "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(36) [~~(29)~~] "Certified components" means components of x-ray systems which are subject to regulations promulgated under 21 CFR Subchapter J.

(37) [~~(30)~~] "Certified system" means an x-ray system which has one (1) or more certified component[~~(s)~~].

(38) "Certified cabinet x-ray system" means an x-ray system which has been certified under 21 CFR 1010.2 as being manufactured and assembled according to the provisions of 21 CFR 1020.40.

(39) [~~(31)~~] "CFR" means Code of Federal Regulations.

(40) [~~(32)~~] "Changeable filters" means a [~~any~~] filter, exclusive of inherent filtration, which can be removed from the useful beam through an electronic, mechanical, or physical process.

(41) "Class (or lung class or inhalation class)" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten (10) days, and for Class W (Weeks) from ten (10) to 100 days, and for Class Y (Years) of greater than 100 days.

(42) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(43) "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.

(44) "Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

(45) "Committed dose equivalent ($H_{T,50}$)" means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty (50) year period following the intake.

(46) "Committed effective dose equivalent ($H_{E,50}$)" means the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ($H_{E,50} = W_T H_{T,50}$).

(47) [~~(33)~~] "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(48) [~~(34)~~] "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(49) [~~(35)~~] "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(50) "Controlled area" means an area, outside of a restricted area but inside the site boundary, to which access can be limited by the licensee or registrant for a reason.

(51) [~~(36)~~] "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(52) [~~(37)~~] "Curie" means a quantity of radioactivity. One (1) curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One (1) millicurie (mCi) = 0.001 curie = 3.7×10^7 dps. One (1) microcurie (uCi) = 0.000001 curie = 3.7×10^4 dps.

(53) [~~(38)~~] "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(54) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(55) "Decommission" means to remove, as a facility, safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

(56) [~~(39)~~] "Dedicated check source" means a radiaoctive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(57) "Deep-dose equivalent (H_d)" which applies to external whole-body exposure, means the dose equivalent at a tissue depth of one (1) centimeter (cm) (1000 mg/cm^2).

(58) [~~(40)~~] "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(59) "Derived air concentration (DAC)" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate one and two-tenths (1.2) cubic meters of air per hour),

results in an intake of one (1) ALI. DAC values are given in 902 KAR 100:019, Section 44, Table I, Column 3.

(60) "Derived air concentration-hour (DAC-hour)" means the product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one (1) ALI, equivalent to a committed effective dose equivalent of five (5) rems (0.05 Sv).

(61) "Diagnostic clinical procedure manual" means a collection of written procedures that describes each method, and other instructions and precautions, by which the licensee performs diagnostic clinical procedures where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

(62) [~~(41)~~] "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(63) [~~(42)~~] "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour if the tube is operated at its maximum continuous rated current for the maximum tube potential.

(64) [~~(43)~~] "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(65) [~~(44)~~] "Direct scatter radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(66) [~~(45)~~] "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(67) [~~(46)~~] "Dose" or "radiation dose" is a generic term that means absorbed dose, [~~or~~] dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. [~~as appropriate:~~]

[~~(a) "Absorbed dose" is the energy imparted to matter by ionizing radiation per unit mass of irradiated material at the place of interest. The special unit of absorbed dose is the rad (see "Rad").~~

~~(b) "Dose equivalent" is a quantity that expresses on a common scale for all radiation a measure of the postulated effect on a given organ. It is defined as the absorbed dose in rads times certain modifying factors. The unit of dose equivalent is the rem (see "Rem").~~]

(68) [~~(47)~~] "Dose commitment" means the total radiation dose to a part of the body that results from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material shall not exceed fifty (50) years.

(69) "Dose equivalent (H_T)" means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(70) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment ($H_{E,50} = W_T H_{T,50}$).

(71) "Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to the organ or tissue (H_T) and the weighing factors (W_T) applicable to each of the body organs or tissues that are irradiated ($H_E = W_T H_T$).

(72) "Embryo or fetus" means the developing human organism from conception until the time of birth.

(73) "Entrance or access point" means a location through which an individual may gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(74) [~~(48)~~] "Entrance exposure rate" means the roentgens per unit time at the point the center of the useful beam enters the patient.

(75) [~~(49)~~] "Exclusive use" (also referred to in other regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor in which initial, intermediate, and final loading and unloading are carried out under [~~in accordance with~~] the direction of the consignor or consignee.

(76) [~~(50)~~] "Exposure" means being exposed to ionizing radiation or to radioactive material [~~the quotient of dQ by dm where dQ is the absolute value of the total charge of the ions of one (1) sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass dm are completely stopped in air. (The special unit of exposure is the roentgen (R).) Exposure also means one (1) or more irradiations of a person for a healing arts purpose~~].

(77) [~~(51)~~] "Exposure rate" means the exposure per unit of time, such as [~~i.e.,~~] roentgen per minute and milliroentgen per hour.

(78) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(79) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(80) "Eye dose equivalent" means to the external exposure of the lens of the eye and means the dose equivalent at a tissue depth of three-tenths (0.3) centimeter (300 mg/cm^2).

(81) [~~(52)~~] "Facility" means the location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle, or under one (1) roof and are under the same administrative control.

(82) [~~(53)~~] "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(83) [~~(54)~~] "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(84) [~~(55)~~] "Filter" means [~~is~~] the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(85) [~~(56)~~] "Fissile material" means special nuclear material consisting of or containing one (1) or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235. Neither natural or depleted uranium is fissile material. (Cabinet jurisdiction extends only to special nuclear material if quantities are not sufficient to form a critical mass as defined in this administrative regulation.)

(a) Fissile Class I: a package which may be transported in unlimited numbers and in an unspecified arrangement, and which requires no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety, but may be required because of external radiation levels.

(b) Fissile Class II: a package which may be transported together with other packages in an unspecified arrangement but, for criticality control, in numbers which do not exceed an aggregate transport index of fifty (50). These shipments require no other nuclear criticality safety control during transportation. Individual packages may have a transport index not less than 0.1 and not more than ten (10).

(86) [~~(57)~~] "Fluoroscopic imaging assembly" means a component which comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(87) [~~(58)~~] "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(88) [~~(59)~~] "Former U.S. Atomic Energy Commission (AEC) or

U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(89) [~~(60)~~] "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(90) "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of 42 USC § 2011 et seq. that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(91) [~~(61)~~] "Generator" (waste generator) means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity.

(92) [~~(62)~~] "Gonad shield" means a protective barrier for the testes or ovaries.

(93) "Gray (Gy)" means the SI unit of absorbed dose. One (1) gray is equal to an absorbed dose of one (1) Joule/kilogram (100 rads).

(94) [~~(63)~~] "Half-value layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent that the exposure rate is reduced to one-half (1/2) of its original value. In this definition, the contribution of scattered radiation, other than that which might be present initially in the beam concerned, is deemed to be excluded.

(95) [~~(64)~~] "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications if [~~when~~] these tests are not specifically and individually ordered by a licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(96) [~~(65)~~] "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, such as [~~i.e.,~~] kVp x mA x seconds.

(97) [~~(66)~~] "High radiation area" means an area, accessible to individuals, in which [~~there exists~~] radiation [~~at~~] levels may result in an individual receiving a dose equivalent [~~that a major portion of the body could receive in one (1) hour period a dose~~] in excess of one-tenth (0.1) rem (1m Sv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates. [~~100 millirems.~~]

(98) [~~(67)~~] "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(99) [~~(68)~~] "Image intensifier" means a device which converts instantaneously by means of photoemissive surfaces and electronic circuitry an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(100) [~~(69)~~] "Image receptor" means a device as a fluorescent screen or radiographic film which transforms incident radiation [~~either~~] into a visual image or into another form which can be made into a visual image by further transformations.

(101) [~~(70)~~] "Image receptor support" means for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(102) [~~(71)~~] "Individual" means a human being.

(103) "Individual monitoring" means the assessment of:

(a) Dose equivalent by the use of devices designed to be worn by an individual;

(b) Committed effective dose equivalent by bioassay (see bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, such as DAC-hours; or

(c) Dose equivalent by the use of survey data.

(104) "Individual monitoring devices (individual monitoring equipment)" means devices designed to be worn by a single individual for the assessment of dose equivalent, such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(105) [~~(72)~~] "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(106) [~~(73)~~] "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(107) [~~(74)~~] "Inspection" means an examination or observation, such as [~~including but not limited to,~~] tests, surveys, and monitoring, to determine compliance with rules, administrative regulations, orders, and requirements of the cabinet.

(108) [~~(75)~~] "Interlock" means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(109) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(110) [~~(76)~~] "Irradiation" means the exposure of matter to ionizing radiation.

(111) [~~(77)~~] "Kilovolt peak (kVp)" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(112) [~~(78)~~] "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(113) [~~(79)~~] "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for the useful beam.

(114) [~~(80)~~] "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being ten (10) milliampere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation, the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment, the maximum rated continuous tube current for the maximum rated peak tube potential.

(115) [~~(81)~~] "License" means a license issued by the cabinet under 902 KAR Chapter 100. [~~in accordance with these administrative regulations.~~]

(116) [~~(82)~~] "Licensed material" means radioactive material received, possessed, used, [~~or~~] transferred, or disposed under a general or specific license issued by the cabinet under 902 KAR Chapter 100. [~~pursuant to these administrative regulations.~~]

(117) [~~(83)~~] "Licensee" means the holder of a license. [~~a person who is licensed by the cabinet in accordance with these administrative regulations and the Act.~~]

(118) "Limits (dose limits)" means the permissible upper bounds of radiation doses.

(119) "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(120) [~~(84)~~] "Logging assistant" means an individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who uses survey instruments in well-logging activities.

(121) [~~(85)~~] "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(122) [~~(86)~~] "Logging tool" means a device used subsurface to perform well-logging.

(123) "Lost or missing licensed material" means licensed material

whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(124) [~~(87)~~] "Low specific activity material" means:

(a) Uranium or thorium ores and physical or chemical concentrates of those ores;

(b) Unirradiated natural or depleted uranium or unirradiated natural thorium;

(c) Tritium oxide in aqueous solutions provided the concentration does not exceed five (5.0) millicuries per milliliter; or

(d) Material in which the radioactivity is essentially uniformly distributed and in which the estimated average concentration per gram of contents does not exceed:

1. 0.0001 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie;

2. 0.005 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than 0.05 curie, but not more than one (1) curie; or

3. 0.3 millicurie of radionuclides for which the A_2 quantity in 902 KAR 100:070 is more than one (1) curie; or [~~,~~]

(e) Objects of nonradioactive material externally contaminated with radioactive material, if the radioactive material is not readily dispersible and the surface contamination, averaged over an area of one (1) square meter, does not exceed 0.0001 millicurie (220,000 disintegrations per minute) per square centimeter of radionuclides for which the A_2 quantity in 902 KAR 100:070 is not more than 0.05 curie, or 0.001 millicurie (2,200,000 disintegrations per minute) per square centimeter for other radionuclides.

(125) [~~(88)~~] "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42 USC 2014).

(126) [~~(89)~~] "mA" means milliampere.

(127) [~~(90)~~] "Management" means the chief executive officer or that individual's designee.

(128) [~~(91)~~] "mAs" means milliampere second.

(129) [~~(92)~~] "Medical institution" means an organization in which several medical disciplines are practiced.

(130) [~~(93)~~] "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to humans in the practice of the healing arts.

(131) "Member of the public" means an individual in a controlled or unrestricted area. An individual is not a member of the public during a period in which the individual receives an occupational dose.

(132) [~~(94)~~] "Microscopic analytical x-ray equipment" means a device which utilizes x-rays for examining the microscopic structure of materials. This includes x-ray diffraction and spectographic equipment.

(133) "Minor" means an individual less than eighteen (18) years of age.

(134) [~~(95)~~] "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or wrong radiopharmaceutical; or

2. If both the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage and the difference between the administered dosage and prescribe dosage exceeds thirty (30) microcuries.

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

1. Involving the wrong patient, radiopharmaceutical, or route of administration; or

2. If the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

1. Involving the wrong patient or treatment site; or

2. If the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose.

(d) A teletherapy radiation dose:

1. Involving the wrong patient, mode of treatment, or treatment site;

2. If the treatment consists of three (3) or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose;

3. If the calculated weekly administered dose is thirty (30) percent greater than the weekly prescribed dose; or

4. If the calculated total administered dose differs from the total prescribed dose by more than twenty (20) percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

1. Involving the wrong patient, radioisotope, or treatment site (excluding permanent implant seeds that were implanted in the correct site but migrated outside the treatment site);

2. Involving a sealed source that is leaking;

3. If, for a temporary implant, one (1) or more sealed sources are not removed upon completion of the procedure; or

4. If the calculated administered dose differs from the prescribed dose by more than twenty (20) percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient, radiopharmaceutical, route of administration, or if the administered dosage differs from the prescribed dosage; and

2. If the dose to the patient exceeds five (5) rems effective dose equivalent or fifty (50) rems dose equivalent to an individual organ. [~~or radiation from a sealed source other than that one intended;~~

~~(b) A radiopharmaceutical or radiation to the wrong patient;~~

~~(c) A radiopharmaceutical or radiation by a route of administration other than the intended by the prescribing physician;~~

~~(d) A diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than fifty (50) percent;~~

~~(e) A therapeutic dosage of a radiopharmaceutical differing from the prescribed dosage by more than ten (10) percent; or~~

~~(f) A therapeutic radiation dose from a sealed source so that errors in the source calibration, time of exposure, or treatment geometry resulted in a calculated total treatment dose differing from the final prescribed total treatment dose by more than ten (10) percent.~~]

(135) [~~(96)~~] "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

(136) [~~(97)~~] "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(137) "Monitoring (radiation monitoring, radiation protection monitoring)" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(138) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).

(139) [~~(98)~~] "Normal form radioactive material" means radioactive material which has not been demonstrated to quality as "special form radioactive material."

(140) "NRC" means the Nuclear Regulatory Commission or its duly authorized representatives.

(141) [~~(99)~~] "Occupational dose" means exposure of an individual to radiation:

(a) In a restrictive area; or

(b) In the course of employment in which the individual's assigned duties involve exposure to radiation and to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. [~~; except that~~] Occupational dose

shall not [~~be deemed to~~] include dose received from background radiation as a patient from [~~exposure of an individual to radiation for the purpose of~~] medical practices, from voluntary participation in medical research programs, or as a member of the general public. [~~diagnosis or medical therapy of that individual.~~]

(142) [~~(100)~~] "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(143) [~~(101)~~]"Operating procedures" means detailed written instructions, such as [~~including but not limited to~~] the normal operation of equipment and movable shielding, closing of interlock circuits, manipulation of controls, radiation monitoring procedures for personnel and areas, testing of interlocks, and recordkeeping requirements.

(144) [~~(102)~~] "Package" means the packaging together with its radioactive contents as presented for transport.

(145) [~~(103)~~] "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 902 KAR 100:070. It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(146) [~~(104)~~] "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(147) [~~(105)~~] "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(148) [~~(106)~~] "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(149) [~~(107)~~] "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state or other state, or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

(150) [~~(108)~~] "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in proximity so that contact can be maintained and immediate assistance given as required.

(151) [~~(109)~~] "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual, such as [~~(e.g.,~~] film badges, pocket dosimeters, and thermoluminescent dosimeters (TLD).

(152) [~~(110)~~] "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

(153) [~~(111)~~] "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device[~~(s)~~]. The radiation monitoring device[~~(s)~~] is part of an electronic circuit which controls the duration of time the tube is activated (see "automatic exposure control").

(154) [~~(112)~~] "Physician" means an individual licensed to practice medicine or osteopathy in this state.

(155) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(156) [~~(113)~~] "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(157) [~~(114)~~] "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under 902 KAR 100:110 [~~these administrative regulations~~].

(158) [~~(115)~~] "Preregistration" means preregistration with the cabinet as specified in 902 KAR 100:110 [~~these administrative regulations~~].

(159) "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) In a written directive;

(b) In the diagnostic clinical procedures manual; or

(c) In an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(160) "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive; or

(c) For brachytherapy, the total source strength and exposure time or the total dose, as documented in the written directive.

(161) [~~(116)~~] "Primary dose monitoring system" means a system which monitors the useful beam during irradiation and which terminates irradiation if [~~when~~] a preselected number of dose monitor units have been acquired.

(162) [~~(117)~~] "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(163) [~~(118)~~] "Protective barrier" means a barrier of radiation absorbing material[~~(s)~~] used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(164) [~~(119)~~] "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(165) "Public dose" means the dose received by a member of the public from exposure to radiation and to radioactive material released by a licensee, or to another source of radiation within a licensee's controlled area or in unrestricted areas. It does not include occupational dose or doses received from background radiation, as a patient from medical practices, or from voluntary participation in medical research programs.

(166) [~~(120)~~] "Qualified expert" means an individual who has demonstrated to the satisfaction of the cabinet that he possesses the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

(167) "Quality factor (Q)" means the modifying factor that is used to derive dose equivalent from absorbed dose.

(a) Quality factors and absorbed dose equivalencies:

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent[a]
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

[a]Absorbed dose in rad equal to one (1) rem or the absorbed dose in gray equal to one (1) sievert.

(b) Mean quality factors, Q, and fluency per unit dose equivalent for monoenergetic neutrons:

Neutron	Quality	Fluency per Unit

	Energy (MeV)	Factor[a] (Q)	Dose Equivalent[b] (neutrons cm^{-2} rem^{-1})
(thermal)	2.5×10^{-8}	2	980×10^6
	1×10^{-7}	2	980×10^6
	1×10^{-6}	2	810×10^6
	1×10^{-5}	2	810×10^6
	1×10^{-4}	2	840×10^6
	1×10^{-3}	2	980×10^6
	1×10^{-2}	2.5	1010×10^6
	1×10^{-1}	7.5	170×10^6
	5×10^{-1}	11	39×10^6
	1	11	27×10^6
	2.5	9	29×10^6
	5	8	23×10^6
	7	7	24×10^6
	10	6.5	24×10^6
	14	7.5	17×10^6
	60	5.5	16×10^6
	1×10^2	4	20×10^6
	2×10^2	3.5	19×10^6
	3×10^2	3.5	16×10^6
	4×10^2	3.5	14×10^6

[a]Value of quality factor (Q) at the point at which the dose equivalent is maximum in a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

[b]Monoenergetic neutrons incident normally on a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

(168) "Quarter" means a period of time equal to one-fourth (0.25) of the year observed by the licensee (approximately thirteen (13) consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(169) [~~(121)~~] "Rad" means the special unit of absorbed dose. One (1) rad equals an absorbed dose of 0.01 joule per kilogram (0.01 gray) or [~~of material; for example, if tissue is the material of interest, then one (1) rad equals~~] 100 ergs per gram [~~of tissue~~].

(170) [~~(122)~~] "Radiation" means ionizing radiation which includes the following: gamma rays, x-rays, alpha particles, beta particles, high speed electrons, neutrons, high-speed protons, and other atomic particles capable of producing ions. This definition does not include nonionizing radiations, such as [~~i.e.,~~] sound, microwaves, radiowaves, or visible, infrared, or ultraviolet light.

(a) "Leakage radiation" means radiation coming from within the tube or source housing except the useful beam.

(b) "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. It may also have been modified by a decrease in energy.

(c) "Useful radiation" means radiation which passes through the window, aperture, cone, or other beam limiting device of the tube or source housing. Sometimes called "primary beam."

(d) "Stray radiation" means the sum of leakage and scattered radiation.

(171) [~~(123)~~] "Radiation area" means an area, accessible to individuals, in which there exists radiation at levels that an individual may [~~a major portion of the body could~~] receive in [~~any one (1) hour a dose in~~] excess of five (5) millirems (0.05 mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates [~~, or in any five (5) consecutive days a dose in excess of 100 millirems~~].

(172) [~~(124)~~] "Radiation machine" means a device capable of producing radiation except devices which produce radiation only from radioactive material.

(173) [~~(125)~~] "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection administrative regulations.

(174) [~~(126)~~] "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(175) [~~(127)~~] "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(176) [~~(128)~~] "Radioactive material" means a solid, liquid, or gas, which emits radiation spontaneously.

(177) [~~(129)~~] "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(178) [~~(130)~~] "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(179) [~~(131)~~] "Radiographer" means an individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these administrative regulations and license conditions.

(180) [~~(132)~~] "Radiographer's assistant" means an individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(181) "Radiographer instructor" means a radiographer who has been authorized by the cabinet to provide on-the-job training to radiographer trainees under 902 KAR 100:100, Section 11(1).

(182) "Radiographer trainee" means an individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of instruction.

(183) [~~(133)~~] "Radiographic exposure device" means an instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(184) [~~(134)~~] "Radiographic imaging system" means a system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(185) "Radiographic personnel" means a radiographer, radiographer instructor, or radiographer trainee.

(186) [~~(135)~~] "Rating" means the operating limits as specified by the component manufacturer.

(187) "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive if a written directive is required;

(b) A radiopharmaceutical or radiation if a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131 if:

1. The administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage, and

2. The difference between the administered dosage and prescribed dosage exceeds fifteen (15) microcuries;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage;

(e) A teletherapy radiation dose if the calculated weekly administered dose is fifteen (15) percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose if the calculated administered dose differs from the prescribed dose by more than ten (10) percent of the prescribed dose.

(188) [~~(136)~~] "Recording" means producing a permanent form of an image resulting from x-ray photons.

(189) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(190) [(137)] "Registrant" means a person who is registered with the cabinet and is legally obligated to register with the cabinet under 902 KAR 100:110 [pursuant to these administrative regulations].

(191) [(138)] "Registration" means registration with the cabinet under 902 KAR 100:110 [in accordance with these administrative regulations].

(192) [(139)] "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

(193) [(140)] "Rem" means a special unit of quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (one (1) rem = 0.01 sievert). [One (1) millirem (mrem) = 0.001 rem. For the purposes of these administrative regulations, the following are considered to be equal to one (1) rem:

(a) An exposure of one (1) roentgen due to x or gamma radiation;

(b) An absorbed dose of one (1) rad due to x, gamma, or beta radiation;

(c) An absorbed dose of 0.05 rad due to particles heavier than protons and with sufficient energy to reach the lens of the eye; or

(d) An absorbed dose of one tenth (0.1) rad due to neutrons or high energy protons. If it is more convenient to measure the neutron flux, or equivalent, than to determine the neutron dose in rads, one (1) rem of neutron radiation may, for purposes of these administrative regulations, be assumed to be equivalent to fourteen (14) million neutrons per square centimeter incident upon the body; or, if there exists sufficient information to estimate with reasonable accuracy the approximate distribution in energy of the neutrons, the incident number of neutrons per square centimeter equivalent to one (1) rem may be estimated from the following table:

Neutron Flux Dose Equivalence

Neutron energy (MeV)	Number of neutrons per square centimeter for a dose equivalent of 1 rem (neutrons/square cm)	Average flux to deliver 100 mrem in 40 hrs. (neutrons/square cm per second)
Thermal	970 x 10^6	670
0.0001	720 x 10^6	500
0.005	820 x 10^6	570
0.02	400 x 10^6	280
0.1	120 x 10^6	80
0.5	43 x 10^6	30
1.0	26 x 10^6	18
2.5	29 x 10^6	20
5.0	26 x 10^6	18
7.5	24 x 10^6	17
10.0	24 x 10^6	17
10 to 30	14 x 10^6	10]

(194) [(141)] "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(195) "Residential location" means an area where structures in which people lodge or live are located, and the grounds on which structures are located, such as houses, apartments, condominiums, and garages.

(196) "Respiratory protective device" means an apparatus used to reduce the individual's intake of airborne radioactive materials, such as a respirator.

(197) [(142)] "Restricted area" means an area access to which is limited [controlled] by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to radiation and radioactive materials. A restricted area shall not include areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(198) [(143)] "Roentgen" means the special unit of exposure. One (1) roentgen (R) equals 2.58 x 10^{-4} coulombs per kilogram of air (see "Exposure").

(199) "Sanitary sewerage" means a system of public sewers for carrying off waste, water, and refuse, but excludes sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(200) [(144)] "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the radioactive material.

(201) [(145)] "Secondary dose monitoring system" means a system which terminates irradiation upon [in the event of] failure of the primary system.

(202) [(146)] "Secretary" means the Secretary of the Cabinet for Human Resources.

(203) "Shallow-dose equivalent (H_s)", means the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven (7) mg/cm^2) averaged over an area of one (1) square centimeter.

(204) [(147)] "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(205) "Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 10.

(206) [(148)] "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(207) "Sievert" means:

(a) The International System (SI) unit of quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv=100 rems).

(b) As used in this administrative regulation, the quality factors for converting absorbed dose to dose equivalent are shown in the table listed in subsection 164 of this administrative regulation.

(208) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(209) [(149)] "Source" means the focal spot of the x-ray tube.

(210) [(150)] "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(211) [(151)] "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(212) [(152)] "Source image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.

(213) [(153)] "Source material" means:

(a) Uranium or thorium, or a combination thereof, in a [any] physical or chemical form; or

(b) Ores which contain by weight one-twentieth (1/20) of one (1) percent (0.05 percent) or more of:

1. Uranium;
2. Thorium; or
3. Combination thereof.

(c) Source material does not include special nuclear material.

(214) [~~(154)~~] "Source of radiation" means a radioactive material or device or equipment emitting or capable of producing radiation.

(215) [~~(155)~~] "Special form" means radioactive material which satisfies the following conditions:

(a) It is [~~either~~] a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission (NRC). A special form encapsulation designed under [~~in accordance with~~] the NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation [~~either~~] designed or constructed after June 30, 1985 shall meet requirements of this definition applicable if [~~when~~] it is designed or constructed.

(216) [~~(156)~~] "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or successor thereto, has determined the material to be special nuclear material, but does not include source material; or

(b) Material artificially enriched by one (1) of the foregoing, but does not include source material.

(217) [~~(157)~~] "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; U-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or a combination of them as specified by [~~in accordance with~~] the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of these ratios for the different kinds of special nuclear material in combination shall not exceed one (1). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175 \text{ (grams contained U-235)}}{350} +$$

$$\frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(218) [~~(158)~~] "Special purpose x-ray system" means a radiographic x-ray system which, by design, is limited to radiographic examination of a specific anatomical region.

(219) [~~(159)~~] "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(220) [~~(160)~~] "Spot check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(221) [~~(161)~~] "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(222) [~~(162)~~] "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(223) [~~(163)~~] "SSD" means the distance between the source and the skin of the patient.

(224) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose with threshold, such as hereditary effects and cancer incidence.

(225) [~~(164)~~] "Storage" (waste storage) means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(226) "Storage area" means a location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, a storage container, or a sealed source if it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

(227) [~~(165)~~] "Storage container" means a device in which sealed sources are transported or stored.

(228) [~~(166)~~] "Stray radiation" means the sum of leakage and scattered radiation.

(229) [~~(167)~~] "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(230) [~~(168)~~] "Survey" means an evaluation of the radiological conditions and potential hazardous incident to the production, use, transfer, release, disposal, or presence of sources of radiation [~~under a specific set of conditions to determine actual or potential radiation hazards~~]. If appropriate, the evaluation shall include a minimum of a physical survey of the location of sources of radiation [~~, but is not limited to, tests, physical examinations,~~] and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(231) [~~(169)~~] "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For other equipment, peak tube potential in kV and tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(232) [~~(170)~~] "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(233) [~~(171)~~] "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study other than the location listed in a specific license or certificate of registration.

(234) [~~(172)~~] "Termination of irradiation" means the stopping of irradiation in a fashion which does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(235) [~~(173)~~] "Tests" means the process of verifying compliance with an applicable regulation.

(236) [~~(174)~~] "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if the tube is operated at its maximum rated tube potential;

(b) For x-ray therapy equipment capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter

from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for its operating conditions;

(c) Small areas of reduced protection are acceptable providing the average reading over a 100 square centimeter area at one (1) meter distance from the target does not exceed the values given above.

~~[(175) "These administrative regulations" means radiation administrative regulations adopted by the Cabinet for Human Resources, Kentucky's Administrative Regulations on radiation, 902 KAR Chapter 100.]~~

(237) ~~[(176)]~~ "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(238) "Total effective dose equivalent (TEDE)" means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(239) ~~[(177)]~~ "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one (1) or more intermediate steps and that comparisons have been documented.

(240) "Transport container" means a package that is designed to provide radiation safety and security if sealed sources are transported and which meets the requirements of the 49 CFR 173, Subpart I.

(241) ~~[(178)]~~ "Transport index" means the dimensionless number (rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one (1) meter from the external surface of the package.

(242) ~~[(179)]~~ "Treatment" (waste treatment) means a method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of a waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material, or reduced in volume.

(243) ~~[(180)]~~ "Tube" means an x-ray tube, unless otherwise specified.

(244) ~~[(181)]~~ "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements if they are contained within the tube housing.

(245) ~~[(182)]~~ "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(246) ~~[(183)]~~ "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material or A_2 for normal form radioactive material, where A_1 and A_2 are given in 902 KAR 100:070, Section 21, or may be determined by procedures described in 902 KAR 100:070, Section 20.

(247) ~~[(184)]~~ "Type B package" means a Type B packaging together with its radioactive contents. A Type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(248) ~~[(185)]~~ "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(249) ~~[(186)]~~ "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(250) ~~[(187)]~~ "U.S. Department of Energy" means the Department of Energy established by 42 USC 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof and retransferred to the Secretary of Energy in ~~[pursuant to]~~ 42 USC 7151, effective October 1, 1977.

(251) ~~[(188)]~~ "Unrefined and unprocessed ore" means ore in its natural form prior to processing, such as ~~[i.e.,]~~ grinding, roasting, beneficiating, or refining.

(252) ~~[(189)]~~ "Unrestricted area" means an area access to which is not controlled or limited by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material, and areas used for residential quarters.

(253) ~~[(190)]~~ "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam limiting device if the exposure switch or timer is activated.

(254) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle does not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.

(255) ~~[(191)]~~ "User" means an individual who personally utilizes or manipulates a source of radiation.

(256) ~~[(192)]~~ "Variable-aperture beam limiting device" means a beam limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(257) ~~[(193)]~~ "Vendor" means for the purposes of 902 KAR 100:110 ~~[these administrative regulations]~~ a person who sells for profit radiation producing machines or accelerators registerable with the cabinet as specified by 902 KAR 100:110 ~~[these administrative regulations]~~.

(258) ~~[(194)]~~ "Vendor registration" means registration of a vendor with the cabinet described by 902 KAR 100:110 ~~[these administrative regulations]~~.

(259) ~~[(195)]~~ "Vendor registrant" means a vendor who is registered with the cabinet.

(260) "Very high radiation area" means an area, accessible to individuals, in which radiation levels may result in an individual receiving an absorbed dose in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a radiation source or from a surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (such as rads and grays) are appropriate, rather than units of dose equivalent (such as rems and sieverts).

(261) ~~[(196)]~~ "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(262) ~~[(197)]~~ "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(263) ~~[(198)]~~ "Waste" (see "low-level radioactive waste").

(264) ~~[(199)]~~ "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(265) "Week" means seven (7) consecutive days starting on Sunday.

(266) "Weighing factor (W_T)", for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects if the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of (W_T) are:

Organ Dose Weighing Factors

Organ or tissue	WT
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	[1]0.30
Whole Body	[2]1.00

[1]0.30 results from 0.06 for each of five (5) "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

[2]For the purpose of weighing the external whole body dose (for adding it to the internal dose), a single weighing factor, W_T=1.0, has been specified. The use of other weighing factors for external exposure will be approved on a case-by-case basis until a time as specific guidance is issued.

(267) [~~(200)~~] "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(268) [~~(201)~~] "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(269) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(270) [~~(202)~~] "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(271) [~~(203)~~] "Wire line service operation" means an evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(272) [~~(204)~~] "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(273) "Working level (WL)" means a combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one (1) liter of air that results in the ultimate emission of 1.3×10^5MeV of potential alpha particle energy.

(274) "Working level month (WLM)" means an exposure to one (1) working level for 170 hours (2,000 working hours per year/twelve (12) months per year = approximately 170 hours per month).

(275) "Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this subsection, and containing the following information:

(a) For an administration of quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

1. Prior to implementation: the radioisotope, number of sources, and source strengths; and

2. After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

(276) [~~(205)~~] "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

(277) [~~(206)~~] "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment may be used as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(278) [~~(207)~~] "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection.

(279) [~~(208)~~] "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube[~~(s)~~], high-voltage switches, electrical protective devices, and other appropriate elements.

(280) [~~(209)~~] "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(281) [~~(210)~~] "X-ray system" means an assemblage of components for the controlled production of x-rays, such as [~~including, but not limited to,~~] an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system shall be considered integral parts of the system.

(282) [~~(211)~~] "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

(283) [~~(212)~~] "X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

(284) "Year" means the period of time beginning in January used to determine compliance with the provisions of 902 KAR Chapter 100. The licensee may change the starting date of the year used to determine compliance by the licensee provided the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 1, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994 at 9 a.m. in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources building. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1994 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: John A. Volpe, Ph.D.

(1) Type and number of entities affected: 3000 radiation producing machine registrants, all radioactive material licensees, and other persons who handle radioactive material.

(a) Direct and indirect costs or savings to those affected: There are no costs associated with these amendments.

1. First year: None

2. Continuing cost or savings: No impact.

3. Additional factors increasing or decreasing costs (note any effects upon completion): None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amendments.

(2) Effects on the promulgating administrative body: Technical staff of the administrative body must be knowledgeable of the proposed amendments.

(a) Direct and indirect costs or savings: No impact.

1. First year: Time required for technical staff to become knowledgeable in regard to proposed amendments.

2. Continuing costs or savings: No impact.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: There are no effects on state and local revenue associated with this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to this amendment exist, since it is a Division I compatibility requirement with the U.S. Nuclear Regulatory Commission.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which conflicts, overlaps or duplicates the amendment.

(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: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The terms defined in this administrative regulation are used in regulations which are tiered.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation affects a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services or, in a few instances, airport boards or authorities, that utilize radiation producing machines.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation will not directly affect local government services.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Suggested State Regulation's (SSR) promulgated by the Conference of Radiation Control Program Directors, and the U.S. Food and Drug Administration, and 10 CFR 20 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. This amendment defines terms used in other administrative regulations which relate to radiation producing machines, radioactive material, and all forms of radiation.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about uniformity with the SSR, and with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health & Community Safety
(Proposed Amendment)

902 KAR 100:030. Quantities of radioactive material requiring labeling [~~Posting and disposal requirements~~].

RELATES TO: KRS 211.842 to 211.852, 211.990(4)

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844

NECESSITY AND FUNCTION: [~~The Cabinet for Human Resources is authorized by~~] KRS 211.844 authorizes the Cabinet for Human Resources to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and to regulate the handling and disposal of radioactive waste. This administrative regulation provides for quantity requirements for labeling [~~posting and disposal~~] of radioactive material. This administrative regulation shall apply to persons licensed as authorized by 902 KAR 100:017, 902 KAR 100:022, 902 KAR 100:040, 902 KAR 100:041, 902 KAR 100:045, 902 KAR 100:050, 902 KAR 100:052, 902 KAR 100:058, 902 KAR 100:065, 902 KAR 100:073, 902 KAR 100:090, 902 KAR 100:100, 902 KAR 100:142, 902 KAR 100:165, and 902 KAR 100:170.

[~~Section 1. Applicability. This administrative regulation shall apply to persons licensed as authorized by the cabinet's radiation administrative regulations.~~]

Section 1. [~~2.~~] Table. The following table provides the quantities of radioactive material requiring labeling [~~quantity requirements for posting and disposal of radioactive material~~] as set forth in 902 KAR 100:019 [~~902 KAR 100:020 and 902 KAR 100:021~~]:

Quantities of Radioactive Material Requiring Labeling
[~~QUANTITY BASES FOR POSTING AND DISPOSAL REQUIREMENTS~~]

Radionuclide	Quantity (μCi)*	Radionuclide	Quantity (μCi)*
Hydrogen-3	1,000	Chromium-48	1,000
Beryllium-7	1,000	Chromium-49	1,000
Beryllium-10	1	Chromium-51	1,000
Carbon-11	1,000	Manganese-51	1,000
Carbon-14	1,000	Manganese-52m	1,000
Fluorine-18	1,000	Manganese-52	100
Sodium-22	10	Manganese-53	1,000
Sodium-24	100	Manganese-54	100
Magnesium-28	100	Manganese-56	1,000
Aluminum-26	10	Iron-52	100
Silicon-31	1,000	Iron-55	100
Silicon-32	1	Iron-59	10
Phosphorus-32	10	Iron-60	1
Phosphorus-33	100	Cobalt-55	100
Sulfur-35	100	Cobalt-56	10
Chlorine-36	10	Cobalt-57	100

Chlorine-38	1,000
Chlorine-39	1,000
Argon-39	1,000
Argon-41	1,000
Potassium-40	100
Potassium-42	1,000
Potassium-43	1,000
Potassium-44	1,000
Potassium-45	1,000
Calcium-41	100
Calcium-45	100
Calcium-47	100
Scandium-43	1,000
Scandium-44m	100
Scandium-44	100
Scandium-46	10
Scandium-47	100
Scandium-48	100
Scandium-49	1,000
Titanium-44	1
Titanium-45	1,000
Vanadium-47	1,000
Vanadium-48	100
Vanadium-49	1,000
Gallium-66	100
Gallium-67	1,000
Gallium-68	1,000
Gallium-70	1,000
Gallium-72	100
Gallium-73	1,000
Germanium-66	1,000
Germanium-67	1,000
Germanium-68	10
Germanium-69	1,000
Germanium-71	1,000
Germanium-75	1,000
Germanium-77	1,000
Germanium-78	1,000
Arsenic-69	1,000
Arsenic-70	1,000
Arsenic-71	100
Arsenic-72	100
Arsenic-73	100
Arsenic-74	100
Arsenic-76	100
Arsenic-77	100
Arsenic-78	1,000
Selenium-70	1,000
Selenium-73m	1,000
Selenium-73	100
Selenium-75	100
Selenium-79	100
Selenium-81m	1,000
Selenium-81	1,000
Selenium-83	1,000
Bromine-74m	1,000
Bromine-74	1,000
Bromine-75	1,000
Bromine-76	100
Bromine-77	1,000
Bromine-80	1,000
Bromine-80	1,000
Bromine-82	100
Bromine-83	1,000
Bromine-84	1,000
Krypton-74	1,000
Krypton-76	1,000
Cobalt-58m	1,000
Cobalt-58	100
Cobalt-60m	1,000
Cobalt-60	1
Cobalt-61	1,000
Cobalt-62m	1,000
Nickel-56	100
Nickel-57	100
Nickel-59	100
Nickel-63	100
Nickel-65	1,000
Nickel-66	10
Copper-60	1,000
Copper-61	1,000
Copper-64	1,000
Copper-67	1,000
Zinc-62	100
Zinc-63	1,000
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zinc-71m	1,000
Zinc-72	100
Gallium-65	1,000
Krypton-81	1,000
Krypton-83m	1,000
Krypton-85m	1,000
Krypton-85	1,000
Krypton-87	1,000
Krypton-88	1,000
Rubidium-79	1,000
Rubidium-81m	1,000
Rubidium-81	1,000
Rubidium-82m	1,000
Rubidium-83	100
Rubidium-84	100
Rubidium-86	100
Rubidium-87	100
Rubidium-88	1,000
Rubidium-89	1,000
Strontium-80	100
Strontium-81	1,000
Strontium-83	100
Strontium-85m	1,000
Strontium-85	100
Strontium-87m	1,000
Strontium-89	10
Strontium-90	0.1
Strontium-91	100
Strontium-92	100
Yttrium-86m	1,000
Yttrium-86	100
Yttrium-87	100
Yttrium-88	10
Yttrium-90m	1,000
Yttrium-90	10
Yttrium-91m	1,000
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Yttrium-94	1,000
Yttrium-95	1,000
Zirconium-86	100
Zirconium-88	10
Zirconium-89	100
Zirconium-93	1
Zirconium-95	10
Krypton-77	1,000
Krypton-79	1,000
Niobium-89	1,000
Niobium-89m (66 min)	1,000
Niobium-89 (122 min)	1,000
Niobium-90	100
Niobium-93m	10
Niobium-94	1
Niobium-95m	100
Niobium-95	100
Niobium-96	100
Niobium-97	1,000
Niobium-98	1,000
Molybdenum-90	100
Molybdenum-93m	100
Molybdenum-93	10
Molybdenum-99	100
Molybdenum-101	1,000
Technetium-93m	1,000
Technetium-93	1,000
Technetium-94m	1,000
Technetium-94	1,000
Technetium-96m	1,000
Technetium-96	100
Technetium-97m	100
Technetium-97	1,000
Technetium-98	10
Technetium-99m	1,000
Technetium-99	100
Technetium-101	1,000
Technetium-104	1,000
Ruthenium-94	1,000
Ruthenium-97	1,000
Ruthenium-103	100
Ruthenium-105	1,000
Ruthenium-106	1
Rhodium-99m	1,000
Rhodium-99	100
Rhodium-100	100
Rhodium-101m	1,000
Rhodium-101	10
Rhodium-102m	10
Rhodium-102	10
Rhodium-103m	1,000
Rhodium-105	100
Rhodium-106m	1,000
Rhodium-107	1,000
Palladium-100	100
Tin-123m	1,000
Tin-123	10
Tin-125	10
Tin-126	10
Tin-127	1,000
Tin-128	1,000
Antimony-115	1,000
Antimony-116m	1,000
Antimony-116	1,000
Antimony-117	1,000
Antimony-118m	1,000
Antimony-119	1,000
Antimony-120 (16m)	1,000
Antimony-120 (5.76d)	100
Antimony-122	100
Zirconium-97	100
Niobium-88	1,000
Palladium-101	1,000
Palladium-103	100
Palladium-107	10
Palladium-109	100
Silver-102	1,000
Silver-103	1,000
Silver-104m	1,000
Silver-104	1,000
Silver-105	100
Silver-106m	100
Silver-106	1,000
Silver-108m	1
Silver-11Om	10
Silver-111	100
Silver-112	100
Silver-115	1,000
Cadmium-104	1,000
Cadmium-107	1,000
Cadmium-109	1
Cadmium-113m	0.1
Cadmium-113	100
Cadmium-115m	10
Cadmium-115	100
Cadmium-117m	1,000
Cadmium-117	1,000
Indium-109	1,000
Indium-110 (69.1m)	1,000
Indium-11O (4.9h)	1,000
Indium-111	100
Indium-112	1,000
Indium-113m	1,000
Indium-114m	10
Indium-115m	1,000
Indium-115	100
Indium-116m	1,000
Indium-117m	1,000
Indium-117	1,000
Indium-119m	1,000
Tin-110	100
Tin-111	1,000
Tin-113	100
Tin-117m	100
Tin-119m	100
Tin-121m	100
Tin-121	1,000
Tellurium-133	1,000
Tellurium-134	1,000
Iodine-120m	1,000
Iodine-120	100
Iodine-121	1,000
Iodine-123	100
Iodine-124	10
Iodine-125	1
Iodine-126	1
Iodine-128	1,000
Iodine-129	1
Iodine-130	10
Iodine-131	1
Iodine-132m	100
Iodine-132	100
Iodine-133	10
Iodine-134	1,000

Antimony-124m	1,000
Antimony-124	10
Antimony-125	100
Antimony-126m	1,000
Antimony-126	100
Antimony-127	100
Antimony-128 (10.4m)	1,000
Antimony-128 (9.01h)	100
Antimony-129	100
Antimony-130	1,000
Antimony-131	1,000
Tellurium-116	1,000
Tellurium-121m	10
Tellurium-121	100
Tellurium-123m	10
Tellurium-123	100
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	1,000
Tellurium-129m	10
Tellurium-129	1,000
Tellurium-131m	10
Tellurium-131	100
Tellurium-132	10
Tellurium-133m	100
Barium-126	1,000
Barium-128	100
Barium-131m	1,000
Barium-131	100
Barium-133m	100
Barium-133	100
Barium-135m	100
Barium-139	1,000
Barium-140	100
Barium-141	1,000
Barium-142	1,000
Lanthanum-131	1,000
Lanthanum-132	100
Lanthanum-135	1,000
Lanthanum-137	10
Lanthanum-138	100
Lanthanum-140	100
Lanthanum-141	100
Lanthanum-142	1,000
Lanthanum-143	1,000
Cerium-134	100
Cerium-135	100
Cerium-137m	100
Cerium-137	1,000
Cerium-139	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Praseodymium-136	1,000
Praseodymium-137	1,000
Praseodymium-138m	1,000
Praseodymium-139	1,000
Praseodymium-142m	1,000
Praseodymium-142	100
Praseodymium-143	100
Praseodymium-144	1,000
Praseodymium-145	100
Praseodymium-147	1,000
Neodymium-136	1,000
Neodymium-138	100
Iodine-135	100
Xenon-120	1,000
Xenon-121	1,000
Xenon-122	1,000
Xenon-123	1,000
Xenon-125	1,000
Xenon-127	1,000
Xenon-129m	1,000
Xenon-131m	1,000
Xenon-133m	1,000
Xenon-133	1,000
Xenon-135m	1,000
Xenon-135	1,000
Xenon-138	1,000
Cesium-125	1,000
Cesium-127	1,000
Cesium-129	1,000
Cesium-130	1,000
Cesium-131	1,000
Cesium-132	100
Cesium-134m	1,000
Cesium-134	10
Cesium-135m	1,000
Cesium-135	100
Cesium-136	10
Cesium-137	10
Cesium-138	1,000
Promethium-141	1,000
Promethium-143	100
Promethium-144	10
Promethium-145	10
Promethium-146	1
Promethium-147	10
Promethium-148m	10
Promethium-148	10
Promethium-149	100
Promethium-150	1,000
Promethium-151	100
Samarium-141m	1,000
Samarium-141	1,000
Samarium-142	1,000
Samarium-145	100
Samarium-146	1
Samarium-147	100
Samarium-151	10
Samarium-153	100
Samarium-155	1,000
Samarium-156	1,000
Europium-145	100
Europium-146	100
Europium-147	100
Europium-148	10
Europium-149	100
Europium-150 (12.62h)	100
Europium-150 (34.2y)	1
Europium-152m	100
Europium-152	1
Europium-154	1
Europium-155	10
Europium-156	100
Europium-157	100
Europium-158	1,000
Gadolinium-145	1,000
Gadolinium-146	10
Gadolinium-147	100
Neodymium-139m	1,000
Neodymium-139	1,000
Neodymium-141	1,000
Neodymium-147	100
Neodymium-149	1,000
Neodymium-151	1,000
Terbium-147	1,000
Terbium-149	100
Terbium-150	1,000
Terbium-151	100
Terbium-153	1,000
Terbium-154	100
Terbium-155	1,000
Terbium-156m (5.0h)	1,000
Terbium-156m (24.4h)	1,000
Terbium-156	100
Terbium-157	10
Terbium-158	1
Terbium-160	10
Terbium-161	100
Dysprosium-155	1,000
Dysprosium-157	1,000
Dysprosium-159	100
Dysprosium-165	1,000
Dysprosium-166	100
Holmium-155	1,000
Holmium-157	1,000
Holmium-159	1,000
Holmium-161	1,000
Holmium-162m	1,000
Holmium-162	1,000
Holmium-164m	1,000
Holmium-164	1,000
Holmium-166m	1
Holmium-166	100
Holmium-167	1,000
Erbium-161	1,000
Erbium-165	1,000
Erbium-169	100
Erbium-171	100
Erbium-172	100
Thulium-162	1,000
Thulium-166	100
Thulium-167	100
Thulium-170	10
Thulium-171	10
Thulium-172	100
Thulium-173	100
Thulium-175	1,000
Tantalum-182	10
Tantalum-183	100
Tantalum-184	100
Tantalum-185	1,000
Tantalum-186	1,000
Tungsten-176	1,000
Tungsten-177	1,000
Tungsten-178	1,000
Tungsten-179	1,000
Tungsten-181	1,000
Tungsten-185	100
Tungsten-187	100
Tungsten-188	10
Rhenium-177	1,000
Rhenium-178	1,000
Rhenium-181	1,000
Gadolinium-148	0.001
Gadolinium-149	100
Gadolinium-151	10
Gadolinium-152	100
Gadolinium-153	10
Gadolinium-159	100
Ytterbium-162	1,000
Ytterbium-166	100
Ytterbium-167	1,000
Ytterbium-169	100
Ytterbium-175	100
Ytterbium-177	1,000
Ytterbium-178	1,000
Lutetium-169	100
Lutetium-170	100
Lutetium-171	100
Lutetium-172	100
Lutetium-173	10
Lutetium-174m	10
Lutetium-174	10
Lutetium-176m	1,000
Lutetium-176	100
Lutetium-177m	10
Lutetium-177	100
Lutetium-178m	1,000
Lutetium-178	1,000
Lutetium-179	1,000
Hafnium-170	100
Hafnium-172	1
Hafnium-173	1,000
Hafnium-175	100
Hafnium-177m	1,000
Hafnium-178m	0.1
Hafnium-179m	10
Hafnium-180m	1,000
Hafnium-181	10
Hafnium-182m	1,000
Hafnium-182	0.1
Hafnium-183	1,000
Hafnium-184	100
Tantalum-172	1,000
Tantalum-173	1,000
Tantalum-174	1,000
Tantalum-175	1,000
Tantalum-176	100
Tantalum-177	1,000
Tantalum-178	1,000
Tantalum-179	100
Tantalum-180m	1,000
Tantalum-180	100
Tantalum-182m	1,000
Iridium-188	100
Iridium-189	100
Iridium-190m	1,000
Iridium-190	100
Iridium-192m (1.4m)	10
Iridium-192 (73.8d)	1
Iridium-194m	10
Iridium-194	100
Iridium-195m	1,000
Iridium-195	1,000
Platinum-186	1,000
Platinum-188	100
Platinum-189	1,000
Platinum-191	100

Rhenium-182 (12.7h)	1,000
Rhenium-182 (64.Oh)	100
Rhenium-184m	10
Rhenium-184	100
Rhenium-186m	10
Rhenium-186	100
Rhenium-187	1,000
Rhenium-188m	1,000
Rhenium-188	100
Rhenium-189	100
Osmium-180	1,000
Osmium-181	1,000
Osmium-182	100
Osmium-185	100
Osmium-189m	1,000
Osmium-191m	1,000
Osmium-191	100
Osmium-193	100
Osmium-194	1
Iridium-182	1,000
Iridium-184	1,000
Iridium-185	1,000
Iridium-186	100
Iridium-187	1,000
Thallium-194m	1,000
Thallium-194	1,000
Thallium-195	1,000
Thallium-197	1,000
Thallium-198m	1,000
Thallium-198	1,000
Thallium-199	1,000
Thallium-200	1,000
Thallium-201	1,000
Thallium-202	100
Thallium-204	100
Lead-195m	1,000
Lead-198	1,000
Lead-199	1,000
Lead-200	100
Lead-201	1,000
Lead-202m	1,000
Lead-202	10
Lead-203	1,000
Lead-205	100
Lead-209	1,000
Lead-210	0.01
Lead-211	100
Lead-212	1
Lead-214	100
Bismuth-200	1,000
Bismuth-201	1,000
Bismuth-202	1,000
Bismuth-203	100
Bismuth-205	100
Bismuth-206	100
Bismuth-207	10
Bismuth-210m	0.1
Bismuth-210	1
Bismuth-212	10
Bismuth-213	10
Bismuth-214	100
Polonium-203	1,000
Polonium-205	1,000
Polonium-207	1,000
Polonium-210	0.1
Platinum-193m	100
Platinum-193	1,000
Platinum-195m	100
Platinum-197m	1,000
Platinum-197	100
Platinum-199	1,000
Platinum-200	100
Gold-193	1,000
Gold-194	100
Gold-195	10
Gold-198m	100
Gold-198	100
Gold-199	100
Gold-200m	100
Gold-200	1,000
Gold-201	1,000
Mercury-193m	100
Mercury-193	1,000
Mercury-194	1
Mercury-195m	100
Mercury-195	1,000
Mercury-197m	100
Mercury-197	1,000
Mercury-199m	1,000
Mercury-203	100
Francium-223	100
Radium-223	0.1
Radium-224	0.1
Radium-225	0.1
Radium-226	0.1
Radium-227	1,000
Radium-228	0.1
Actinium-224	1
Actinium-225	0.01
Actinium-226	0.1
Actinium-227	0.001
Actinium-228	1
Thorium-226	10
Thorium-227	0.01
Thorium-228	0.001
Thorium-229	0.001
Thorium-230	0.001
Thorium-231	100
Thorium-232	100
Thorium-234	10
Thorium-natural	100
Protactinium-227	10
Protactinium-228	1
Protactinium-230	0.1
Protactinium-231	0.001
Protactinium-232	1
Protactinium-233	100
Protactinium-234	100
Uranium-230	0.01
Uranium-231	100
Uranium-232	0.001
Uranium-233	0.001
Uranium-234	0.001
Uranium-235	0.001
Uranium-236	0.001
Uranium-237	100
Uranium-238	100
Uranium-239	1,000
Uranium-240	100
Uranium-natural	100
Neptunium-232	100
Astatine-207	100
Astatine-211	10
Radon-220	1
Radon-222	1
Francium-222	100
Neptunium-236 (22.5h)	1
Neptunium-237	0.001
Neptunium-238	10
Neptunium-239	100
Neptunium-240	1,000
Plutonium-234	10
Plutonium-235	1,000
Plutonium-236	0.001
Plutonium-237	100
Plutonium-238	0.001
Plutonium-239	0.001
Plutonium-240	0.001
Plutonium-241	0.01
Plutonium-242	0.001
Plutonium-243	1,000
Plutonium-244	0.001
Plutonium-245	100
Americium-237	1,000
Americium-238	100
Americium-239	1,000
Americium-240	100
Americium-241	0.001
Americium-242m	0.001
Americium-242	10
Americium-243	0.001
Americium-244m	100
Americium-244	10
Americium-245	1,000
Americium-246m	1,000
Americium-246	1,000
Curium-238	100
Curium-240	0.1
Curium-241	1
Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001
Neptunium-233	1,000
Neptunium-234	100
Neptunium-235	100
Neptunium-236 (1.15E+5y)	0.001
Curium-242	0.01
Curium-243	0.001
Curium-244	0.001
Curium-245	0.001
Curium-246	0.001
Curium-247	0.001
Curium-248	0.001
Curium-249	1,000
Berkelium-245	100
Berkelium-246	100
Berkelium-247	0.001
Berkelium-249	0.1
Berkelium-250	10
Californium-244	100
Californium-246	1
Californium-248	0.01
Californium-249	0.001
Californium-250	0.001
Californium-251	0.001
Californium-252	0.001
Californium-253	0.1
Californium-254	0.001
Einsteinium-250	100
Einsteinium-251	100
Einsteinium-253	0.1
Einsteinium-254m	1
Einsteinium-254	0.01
Fermium-252	1
Fermium-253	1
Fermium-254	10
Fermium-255	1
Fermium-257	0.01
Mendelevium-257	10
Mendelevium-258	0.01
Any radionuclide other than alpha-emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01

NOTES: For purposes where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1" - that is, unity.

The quantities listed above were derived by taking 1/10th of the most restrictive ALI listed in Table I, Columns 1 and 2, of 902 KAR 100:019 Section 44, rounding to the nearest factor of 10, and constraining the values listed between 0.001 and 1,000 μCi (37 Bq and 37 MBq). Values of 100 μCi (3.7 MBq) have been assigned for radionuclides having a radioactive half-life in excess of 1.0E+09 years, except rhenium, 1,000 μCi (37 MBq), to take into

account their low specific activity.

*To convert μCi to kBq, multiply the μCi value by 37.

Material	Microcuries	Material	Microcuries
Americium 241	0.01	Osmium 191	100
Antimony 122	100	Osmium 193	100
Antimony 124	10	Palladium 103	100
Antimony 125	10	Palladium 109	100
Arsenic 73	100	Phosphorus 32	10
Arsenic 74	10	Platinum 191	100
Arsenic 76	10	Platinum 193m	100
Arsenic 77	100	Platinum 193	100
Barium 131	10	Platinum 197m	100
Barium 133	10	Platinum 197	100
Barium 140	10	Plutonium 239	0.01
Bismuth 210	1	Polonium 210	0.1
Bromine 82	10	Potassium 42	10
Cadmium 109	10	Praseodymium 142	100
Cadmium 115m	10	Praseodymium 143	100
Cadmium 115	100	Promethium 147	10
Calcium 45	10	Promethium 149	10
Calcium 47	10	Radium 226	0.01
Carbon 14	100	Rhenium 186	100
Cerium 141	100	Rhenium 188	100
Cerium 143	100	Rhodium 103m	100
Cerium 144	1	Rhodium 105	100
Cesium 131	1,000	Rubidium 86	10
Cesium 134m	100	Rubidium 87	10
Cesium 134	1	Ruthenium 97	100
Cesium 135	10	Ruthenium 103	10
Cesium 136	10	Ruthenium 105	10
Cesium 137	10	Ruthenium 106	1
Chlorine 36	10	Samarium 151	10
Chlorine 38	10	Samarium 153	100
Chromium 51	1,000	Scandium 46	10
Cobalt 58m	10	Scandium 47	100
Cobalt 58	10	Scandium 48	10
Cobalt 60	1	Selenium 75	10
Copper 64	100	Silicon 31	100
Dysprosium 165	10	Silver 105	10
Dysprosium 166	100	Silver 110m	1
Erbium 169	100	Silver 111	100
Erbium 171	100	Sodium 22	1
Europium 152 (9.2h)	Sodium 24 100	Strontium 85	10
Europium 152 (13 yr.)	Strontium 89 1	Strontium 90	0.1
Europium 154	1	Strontium 91	10
Europium 155	10	Strontium 92	10
Fluorine 18	1,000	Sulphur 35	100
Gadolinium 153	10	Tantalum 182	10
Gadolinium 159	100	Technetium 96	10
Gallium 72	10	Technetium 97m	100
Germanium 71	100	Technetium 97	100
Gold 198	100	Technetium 99m	100
Gold 199	100	Technetium 99	10
Hafnium 181	10	Tellurium 125m	10
Holmium 166	100	Tellurium 127m	10
Hydrogen 3	1,000	Tellurium 127	100
Indium 113m	100	Tellurium 129m	10
Indium 114m	10	Tellurium 129	100
Indium 115m	100	Tellurium 131m	10
Indium 115	10	Tellurium 132	10
Iodine 125	1	Terbium 160	10
Iodine 126	1	Thallium 200	100
Iodine 129	0.1	Thallium 201	100
Iodine 131	1	Thallium 202	100
Iodine 132	10	Thallium 204	10
Iodine 133	1	Thorium natural	100
Iodine 134	10	Thulium 170	10
Iodine 135	10	Thulium 171	10
Iridium 192	10	Tin 113	10
Iridium 194	100	Tin 125	10
Iron 55	100	Tungsten 181	10
Iron 59	10	Tungsten 185	10
Krypton 85	100	Tungsten 187	100
Krypton 87	10	Uranium (natural)	100
Lanthanum 140	10	Uranium 233	0.01
Lutetium 177	100	Uranium 234	0.01
Manganese 52	10	Uranium 235	0.01
Manganese 54	10	Vanadium 48	10
Manganese 56	10	Xenon 131m	1,000
Mercury 197m	100	Xenon 133	100
Mercury 197	100	Xenon 135	100
Mercury 203	10	Ytterbium 175	100
Molybdenum 99	100	Ytterbium 90	10
Neodymium 147	100	Yttrium 91	10
Neodymium 149	100	Yttrium 92	100
Nickel 59	100	Yttrium 93	100
Nickel 63	10	Zinc 65	10
Nickel 65	100	Zinc 69m	100
Niobium 93m	10	Zinc 69	1,000
Niobium 95	10	Zirconium 93	10
Niobium 97	10	Zirconium 95	10
Osmium 185	10	Zirconium 97	10
Osmium 191m	100		
An alpha emitting radionuclide not listed above or mixture of alpha emitters of unknown composition			0.01
An radionuclide other than alpha emitting radionuclides, not listed above or mixtures of beta emitters of unknown composition			0.01]

RICE C. LEACH, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 1, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994 at 9 a.m. in the Vital Statistics Conference Room, First Floor, Cabinet for Human Resources building. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1994 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel, Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: John A. Volpe, Ph.D.

(1) Type and number of entities affected: 400 radioactive material licensees, and other persons who handle radioactive material.

(a) Direct and indirect costs or savings to those affected: Personnel time needed to label the specific radioactive material.

1. First year: Personnel time for inventory of materials and labeling, if necessary.

2. Continuing cost or savings: Once inventory complete no continuing cost.

3. Additional factors increasing or decreasing costs (note any effects upon completion): None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements will result from these amend-

ments.

(2) Effects on the promulgating administrative body: Technical staff of the administrative body must be knowledgeable of the proposed amendments.

(a) Direct and indirect costs or savings: No impact.

1. First year: Time required for technical staff to become knowledgeable in regard to proposed amendments.

2. Continuing costs or savings: No impact.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: There are no effects on state and local revenue associated with this amendment.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to this amendment exist, since it is a Division I compatibility requirement with the U.S. Nuclear Regulatory Commission.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which conflicts, overlaps or duplicates the amendment.

(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: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This administrative regulation is applicable to all licensees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 CFR 20 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. This amendment provides quantities of radioactive material requiring labeling.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:010. Application for employer account; reports.

RELATES TO: KRS 341.190

STATUTORY AUTHORITY: KRS 194.050, 341.115

NECESSITY AND FUNCTION: This administrative regulation requires each employing unit to make application for an employer account and to make other additional reports as required by the division.

Section 1. Each employing unit having in the state in covered employment one (1) or more workers shall request from the Division of Unemployment Insurance an "Application for Unemployment Insurance Employer Reserve Account" [{]UI-1 (rev. 6/91), incorporated by reference herein [}], and shall submit this form to the division providing all information requested in the instructions to this form.

Section 2. Each employing unit shall make additional reports as required on the forms prescribed by the division in accordance with the instructions contained on the forms. These forms include UI-1S Supplemental Application for Unemployment Insurance Employer Reserve Account (Rev. 1/93 [~~3/87~~]), UI-3 Employer's Quarterly Unemployment Wage and Tax Report (Rev. 4/94 [~~2/88~~]), UI-3R Reimbursing Employer's Quarterly Unemployment Wage Report (Rev. 4/94 [~~4/88~~]), UI-3S Employer's Quarterly Unemployment Wage and Tax Substitute Report (Rev. 8/93 [~~5/87~~]), UI-3X Employer's Quarterly Unemployment Wage and Tax Report (yellow express envelope) (Rev. 4/94 [~~5/89~~]), UI-3.1A Summary Contribution Report (Rev. 10/92 [~~4/87~~]), UI-3.2 Request to Place Subject Employer's Account in Inactive Status (Rev. 1/90 [~~3/84~~]), UI-14B Employer Schedule of Wage Report Adjustments (Rev. 1/90 [~~4/84~~]), UI-21 Report of Change of Ownership or Discontinuance of Business in Whole or Part (Rev. 10/93 [~~8/89~~]), UI-35 Termination of Coverage Report (Rev. 7/83), UI-47 Claim for Refund of Contributions (Rev. 8/93 [~~1/88~~]), UI-74 Application for Partial Payment Agreement (Rev. 4/88), UI-412A Notice to Employer of Claim for Unemployment Insurance Benefits (Rev. 9/92), UI-203 Overpayment and Fraud Detection (Rev. 7/94), UI-414 Report of Hire or Return to Work (Rev. 7/94), [~~Employer's Notice of Initial Claim (Rev. 7/89)~~] and are incorporated by reference the same as if reproduced in full herein. These forms are on file for public inspection in the Office of the Commissioner for Employment Services, 275 E. Main Street, 2W, Frankfort, Kentucky 40621.

TREVA B. WRIGHT-DONNELL, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 7, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1994, 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, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Treva B. Wright-Donnell

(1) Type and number of entities affected: Approximately 75,000 Kentucky employers.

(a) Direct and indirect costs or savings to those affected: While it is very difficult to place a specific amount of savings to the UI Trust Fund with the implementation of the new hire card by this regulation, we have surveyed several states presently using the new hire card concept and received extremely positive comments. This action is a joint effort between child support and unemployment insurance in many states.

Tennessee - The new hire participation is voluntary. Tennessee is experiencing very positive results with the most substantial plus of the program being the savings in overpaid benefits. Since its inception in 1980, it has saved the Unemployment Insurance Trust Fund over $9 million in benefit overpayments with an annual benefit savings of over $1 million per year.

Alabama - Alabama is presently in the pilot state with a voluntary program and therefore, has no statistical data available. It will be open to all employers effective 10-31-94. With the initial information, Alabama does feel that this is a win-win situation.

Massachusetts - This program is mandatory with very encouraging results and savings that are estimated in the area of $18 million. They believe this program goes a long way toward curbing fraud in entitlement programs and collecting child support.

Virginia - mandatory program.

Hawaii - mandatory program.

Rhode Island - mandatory program.
Maryland - voluntary program.
Illinois - voluntary program.
All states contacted were extremely positive regarding this program.

1. First year: Indeterminable amount of savings to UI Trust Fund depending on the number of overpayments prevented.
2. Continuing costs or savings: Indeterminable
3. Additional factors increasing or decreasing costs (note any effects upon competition): Fluctuations in the economy.

(b) Reporting and paperwork requirements: Minimal - employer would be required to fill a postcard type form with each new hire.

(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Insignificant
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Minimal

(3) Assessment of anticipated effect on state and local revenues: Would decrease the number of overpayments on benefits paid.

(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 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: See (1)(a) above.

TIERING: Is tiering applied? No. All Kentucky employers will follow the same procedures in reporting new hires.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. All local government operations relative to hiring new employees.
3. State the aspect or service of local government to which this administrative regulation relates. Hiring of new employees.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: This regulation would decrease the number of overpayments on employees returning to the work force. The first year savings to the UI Trust Fund is indeterminable at this time but as reflected in the attached narrative, various states who have implemented this requirement on both a voluntary and mandatory basis have realized extremely good results.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:220. Cash value of board and lodging.

RELATES TO: KRS 341.030
STATUTORY AUTHORITY: KRS 194.050, 341.115
NECESSITY AND FUNCTION: This administrative regulation [~~rule~~] sets forth the reasonable cash value of board and lodging when they are in lieu of wages received by the worker and are not specified under the contract of hire.

Section 1. Board, lodging, or any other payment in kind received by a worker in employment from his employing unit in addition to or in lieu of (rather than as a deduction from) money wages shall be deemed to be wages paid by his employing unit.

Section 2. The commission shall determine or approve the cash value of the [~~such~~] payments in kind, and the [~~such~~] cash value shall be used in determining the wages paid to a [~~such~~] worker in employment and in computing contributions due under the law.

Section 3. Where a money value for board or lodging or both furnished an individual in employment is agreed upon in a contract of hire, the amount so agreed upon shall, if more than the rate specifically [~~specially~~] determined by the commission or the rates prescribed herein, be deemed the cash value of the [~~such~~] board and lodging. If [~~Until and unless~~] in a given case a rate for board and lodging is determined by the commission, board and lodging furnished in addition to money wages shall be deemed to have not less than the following values:

Full board and room weekly	$80 [~~10.00~~]
Meals per week	$30 [~~6.50~~]
per day	$5 [~~1.00~~]
per meal	$2 [~~.35~~]
Lodging per week	$50 [~~3.50~~]

TREVA B. WRIGHT-DONNELL, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 7, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994, at 9 a.m. in the Health Services Auditorium located on the first floor of the Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be cancelled unless interested persons notify the following office in writing by August 17, 1994, 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, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Treva B. Wright-Donnell

(1) Type and number of entities affected: Approximately 60 employers per year who provide board, lodging, etc. in lieu of wages and, in rare instances, a claimant when the wage deduction applies.

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimal cost to those employers affected with the true value of board and lodging used in computation of taxable wages.
2. Continuing costs or savings: Costs will remain constant for employers who use this method of payment.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Costs will be affected only by those factors which influence the economy and the number of claimants paid in this manner.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements will remain the same.

(2) Effects on the promulgating administrative body: Very minor effect because of the small number of employers who use this method of compensation.

(a) Direct and indirect costs or savings:

1. First year: Because so few employers and employees are

involved, the overall effect on the UI trust fund and the amount of benefits paid is minimal.

2. Continuing costs or savings: Minimal

3. Additional factors increasing or decreasing costs: The fluctuations in the economy could be a factor in increasing or decreasing costs.

(b) Reporting and paperwork requirements: No additional paperwork.

(3) Assessment of anticipated effect on state and local revenues: May slightly increase the taxable wage base for employers selecting this method.

(4) Assessment of alternative methods; reasons why alternatives were rejected: None available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(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: The purpose of changing this regulation is to realistically reflect the value of food and lodging when considered as payment in lieu of wages. So few employers and employees are involved the overall effect on the UI Trust Fund or UI benefits is negligible.

TIERING: Is tiering applied? No. All employers and claimants dealing with this method of payment will be treated the same.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance, "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC). KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support enforcement activities, strikers and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Child" means an individual age seventeen (17) or under or, if eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study before reaching age nineteen (19) or during the month of the 19th birthday.

(2) "Deprivation" means loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.

(3) "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(4) "Principal wage earner" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for AFDC benefits based on the deprivation of unemployment.

(5) "Prior labor market attachment" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for AFDC benefits based on the deprivation of unemployment.

(6) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A child who is sixteen (16) to eighteen (18) years of age and living in an active JOBS county, in order to determine his status as exempt or nonexempt for participation in the JOBS program, as specified in 904 KAR 2:370.

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

Section 3. Enumeration. (1) Each person included in the AFDC case shall furnish his Social Security number or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not verified.

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4.Residence and Citizenship. (1) Residence. A resident is anyone who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving AFDC benefits from another state.

(2) Citizenship.

(a) AFDC shall be provided only to:

1. Citizens;

2. Aliens lawfully admitted for permanent residence; or

3. Aliens otherwise permanently residing in the United States under color of law.

(b) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall meet the definition of deprivation as specified in Section 1 of this administrative regulation.

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent and:

(a) The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(b) The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence includes:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion of thirty (30) days or more;
5. Forced separation of seven (7) days or more; or
6. Birth out-of-wedlock.

(b) Involuntary absence includes:

1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation; or
4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) [~~(a)~~] Incapacity exists in a case when the following criteria are met:

(a) [~~1.~~] It is medically determined that one (1) parent has a physical or mental disability [~~defect~~], illness or impairment which was:

1. [~~a.~~] Present at the time of application; and
2. [~~b.~~] Which has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) [~~2.~~] The thirty (30) day period may include a period in which the claimant is undergoing:

1. [~~a.~~] Planned diagnostic studies; or
2. [~~b.~~] Evaluation of rehabilitation potential; and

(c) [~~3.~~] It is determined by nonmedical evaluation that the disability [~~defect~~], illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) [~~(b)~~] A determination regarding incapacity shall be made by:

a. [~~1.~~] Field staff if the following criteria [~~specified in 904 KAR 2:040, Section 3(2)~~] are met; [~~; or~~]

1. The parent declares physical inability to work;
2. The worker observes some physical or mental limitation; and
3. The parent:

a. Is receiving Supplemental Security Income (SSI); or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or

d. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either:

(i) The Social Security Administration; or

(ii) The medical review team of the Department for Social Insurance; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance (RSDI), federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

g. Is receiving Veterans Administration (VA) benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of application date; or

(b) [~~2.~~] The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(5) [~~(c)~~] Factors to be considered by the medical review team in making the medical determination shall include:

(a) [~~1.~~] The claimant's medical history and subjective complaints regarding an alleged physical or mental disability [~~defect~~], illness or impairment; and

(b) [~~2.~~] Competent medical testimony relevant to:

1. [~~a.~~] Whether a physical or mental disability [~~defect~~], illness or impairment exists;

2. [~~b.~~] Whether the disability [~~defect~~], illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and

3. [~~c.~~] Whether the disability [~~defect~~], illness or impairment is likely to last thirty (30) days.

(6) [~~(d)~~] Factors to be considered in making the nonmedical evaluation shall include:

(a) [~~1.~~] The claimant's:

1. [~~a.~~] Age;
2. [~~b.~~] Employment history;
3. [~~c.~~] Vocational training;
4. [~~d.~~] Educational background; and
5. [~~e.~~] Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) [~~2.~~] The extent and accessibility of employment opportunities available in the claimant's area of residence.

(7) [~~(e)~~] In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of disabled individuals shall be taken into account; and

(a) [~~1.~~] Available printed materials that provide information regarding available employment opportunities shall be researched;

(b) [~~2.~~] The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

(c) [~~3.~~] The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) [~~(f)~~] A written report shall be made of the determination under this subsection.

(9) [~~(g)~~] Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a

prior labor market attachment.

(2) The determination of the principal wage earner (PWE) shall include the following:

(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

b. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.

(c) Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) Unemployment. A parent shall be considered to be unemployed if:

(a) Employed less than 100 hours in a calendar month; or

(b) Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and

2. Is expected to be under the 100 hour standard in the following month.

(4) Prior labor market attachment (PLMA) shall be established if the parent:

(a) Attests to an employment history meeting the definition in Section 1(5) of this administrative regulation;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, the following shall be taken into consideration:

(a) Participation in Community Work Experience Program (CWEP) or Work Incentive Program (WIN) prior to October 1, 1990, and in the Job Opportunities and Basic Skills (JOBS) Program shall be considered as earning an income in determining PLMA.

(b) Full-time attendance, as defined by the school or institution, may be substituted for two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(6) Restrictions. Unemployment shall not exist if the PWE:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather conditions or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work under Section 14 of this administrative regulation; or

2. Subject to JOBS, as specified in 904 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC- UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 are met.

Section 10. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed;

(2) A relative of the half-blood;

(3) Preceding generations denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) A stepfather, stepmother, stepbrother, stepsister;

(5) Any person listed in subsections (1) through (4) of this section if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation.

(6) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent.

(7) The husband or wife of any person listed in subsections (1) through (6) of this section, even if the marriage may have terminated, providing termination occurred after the birth of the child.

(a) For AFDC eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.

(b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.

(8) If the specified relative continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;

(b) Attendance at boarding school;

(c) College or vocational school;

(d) Emergency foster care; or

(e) Short visits with friends or relatives.

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;

2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:

(a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and

(b) The parent or caretaker relative provides a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

(3) Presence of the sworn statement or affidavit specified in subsection (2)(b) of this section will serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity will not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE and the second parent shall register for work with the Department for Employment Services (DES) if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370.

(2) Failure of the PWE or the second parent to register for work shall result in removal of the needs of the individual who fails to register.

Section 15. Job Opportunities and Basic Skills (JOBS) Training Program. The technical requirements for participation in the JOBS Program are specified in 904 KAR 2:370.

Section 16. Cooperation in Child Support Enforcement Activities. (1) The Department for Social Insurance shall attempt to secure parental support, and if necessary establish paternity, for children receiving AFDC based on the following voluntary absence deprivation factors:

(a) Divorce;
(b) Desertion;
(c) Birth out-of-wedlock;
(d) Legal separation;
(e) Forced separation; or
(f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities. This includes, but is not limited to:

(a) Identifying the absent parent;

(b) Providing information to assist in the location of the absent parent;

(c) Establishing paternity; and

(d) Forwarding child support payments received to the agency.

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made includes, but is not limited to, the following:

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;

2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the absent or alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; and

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the agency conducts an investigation of a good cause claim, it shall not contact the absent or alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. To enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact is unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of AFDC; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

(a) Document the case;

(b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

a. The best interests of the child; or

b. The physical or emotional health of the child or the relative; or

2. Good cause exists and support activities can be initiated without endangering the physical or emotional health of the child or the relative; or

3. Good cause does not exist.

(c) Advise the specified relative in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) The relative shall be ineligible for benefits; and

(b) The agency shall attempt to obtain a protective payee to administer the AFDC payment on behalf of the child.

(8) If, after the exclusion from the grant for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Add the specified relative to the case effective with the date the individual states he will cooperate;

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Except for the PWE in an AFDC-UP case, failure to apply for another benefit or comply with its requirements shall result in ineligibility for AFDC.

(3) If a PWE or second parent in an AFDC-UP case fails to apply for unemployment insurance benefits or comply with its requirements, the PWE or ~~[and]~~ second parent shall have his ~~[their]~~ needs removed from the case.

(4) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the AFDC program, with the exception of JOBS participation, are being incorporated effective December 1, 1993. These forms include:

(a) PA.1C Supplement D, revised 3/92;

(b) PA-14, revised 11/91;

(c) PA-33D, revised 1/92;

(d) PA-121, revised 8/87;

(e) PA-125, revised 6/83;

(f) PA-125 Supplement A, revised 6/83;

(g) PA-125 Supplement B, revised 12/82;

(h) PA-125.1, revised 5/90;

(i) PA-511, revised 10/92;

(j) KA-125, revised 7/92;

(k) KA-125, Supplement A, revised 1/93;

(l) KA-125, Supplement B, revised 7/92;

(m) KA-125, Supplement C, revised 7/92;

(n) CS-333, revised 10/91; and

(o) CS-333.1, revised 9/86.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 30, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, 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: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: The information regarding incapacity determinations was relocated from 904 KAR 2:040 to 904 KAR 2:006 and is not a policy change. That part of this amendment does not create a fiscal impact. The Department for Social Insurance does not capture information to determine exactly how many persons this change will affect as foster care benefits are not currently counted as income in the AFDC case. We believe the number of AFDC eligible specified relatives with the only children in the home receiving foster care benefits will be minimal. The child must be placed with a relative and meet the normal AFDC requirements in order for the specified relative to be eligible.

(a) Direct and indirect cost or savings to those affected: None

1. First Year: None

2. Continuing Cost or Savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: No more than is currently required for an AFDC applicant or recipient.

(2) Effects on the promulgating administrative body: Minimal effect

in terms of additional cases.

(a) Direct and indirect cost or savings: Minimal cost based on information in the type and number of entities affected.

1. First Year: Same as above.

2. Continuing cost or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No more than is currently required for an AFDC applicant or recipient.

(3) Assessment of anticipated effect on state and local revenues: Minimal

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as the policy change is federally mandated.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 233.20(a)(1)(ii), 45 CFR 233.90(c)(1)(v) and 45 CFR 233.90(c)(1)(v)(A). "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, administration for Children and Families, Office of Family Assistance.

2. State compliance standards. Same as item #1.

3. Minimum or uniform standards contained in the federal mandate. Although a child receiving foster care benefits shall not be included in an AFDC case, an otherwise eligible specified relative may apply and be approved.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standards are being applied.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39), PL 103-66 §13736, 13742, "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194.050, 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children (AFDC) Program. This administrative regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3.

(a) The benefit group shall include:

1. The dependent child;

2. The child's eligible parent; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the AFDC Standard of Need.

(3) "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(4) "Claimant" means the individual responsible for an overpayment.

(5) "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(6) "Deduction" means an amount subtracted from gross income to determine countable income.

(7) "Excluded income" means income that is received but not counted in the gross income test.

(8) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(9) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in and adult basic education (ABE) program, a General Educational Development (GED) program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time.

(10) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 7 of this administrative regulation.

(11) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(12) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

(13) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed

throughout the entire month.

(14) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(15) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(16) "Recoupment" means recovery of overpayments of assistance payments.

(17) "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(18) "Unavailable" means that the income is not accessible to the AFDC benefit group for use toward basic food, clothing, shelter, and utilities.

(19) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

(a) Available to the benefit group; and

(b) Owned in whole or in part by:

1. An applicant or recipient;

2. A sanctioned individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of $1,000 equity value excluding those items specifically listed in subsection (3) of this section:

(3) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Equity value up to $1,500 for one (1) motor vehicle;

(c) Basic household items essential for day-to-day living, including:

1. Furniture;

2. Appliances; and

3. Clothing.

(d) Gift or inheritance not legally available until a later date;

(e) Nonessential item with a value of less than fifty (50) dollars;

(f) All resources of a recipient of supplemental security income (SSI) or the state supplementation program (SSP) living in the home;

(g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;

(h) Crops and animals raised for home consumption.

(i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:

1. The benefit group shall agree to repay AFDC benefits received beginning with the first month of the exemption.

2. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.

3. The amount of the repayment shall not exceed the net proceeds of the sale.

4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Children's toys and bicycles;

(k) Household pets;

(l) Resources of a child excluded from the AFDC grant;

(m) Resources of an individual not receiving assistance but living in the home including:

1. The stepparent;

2. Parent or legal guardian of a minor parent;

3. The spouse of a nonresponsible specified relative; or

4. The spouse of a minor dependent child;

(n) Amount of AFDC grant;

(o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.

(p) Funds in an IRA, retirement or deferred compensation account during the period of unavailability;

(q) Excluded income, as specified in Section 4 of this administrative regulation;

(r) Principal and accrued interest of an irrevocable trust during periods of unavailability;

(s) One (1) burial space per AFDC family member;

(t) $1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;

(u) Principal of a verified loan;

(v) Up to $12,000 to Aleutians and $20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;

(w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;

(x) Earned income tax credit (EITC) payments in the month of receipt and the following month; and

(y) Any payment received from the Radiation Exposure Compensation Trust Fund; and

(z) A nonrecurring lump sum supplemental security income (SSI) retroactive payment that is made to an AFDC recipient who is not ongoing eligible for SSI, in the month paid and the next following month.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed $500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every $500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the AFDC client.

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the AFDC client's share is considered available.

(b) For bank accounts which require more than one (1) signature for withdrawals, determine the AFDC client's share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine client's available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the client's share is

determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the client asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the client's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the client's name has been removed from the resource.

Section 3. Income Limitations. In determining eligibility for AFDC the following shall apply:

(1) Gross income test.

(a) The total gross non-AFDC income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI;

3. Income of a sanctioned individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application.

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the assistance standard set forth in Section 7 of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the benefit standard, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need for the benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the AFDC household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded and Deductions Income. All gross non-AFDC income received or anticipated to be received by the benefit group, sanctioned individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 5 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 6 of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) Earnings received by a dependent child from participation in [~~specified~~] programs under the Job Training Partnership Act (JTPA) program for a period not to exceed six (6) months within a given calendar year. [~~These programs are:~~

~~1. Summer youth;~~

~~2. Limited work experience;~~

~~3. Work experience; and~~

~~4. Tryout employment;~~]

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 7 of this administrative regulation, for households in which a member receives a JTPA stipend;

(g) Value of United States Department of Agriculture (USDA) program benefits including:

1. Donated foods;

2. Supplemental food assistance received under 42 USC 1771;

3. Special food service program for children under 42 USC 1775;

4. Nutrition program for the elderly under 42 USC 3001; and

5. The monthly food stamp allotment;

(h) Reimbursement for transportation in performance of employment duties, if identifiable;

(i) The value of JOBS supportive services payments and self-initiated supportive services payments authorized under 904 KAR 2:017;

(j) Nonemergency medical transportation payments;

(k) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program;

(l) Educational grants, loans, scholarships, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(m) [Highway relocation assistance;

(n) Urban renewal assistance;

(o) Federal disaster assistance and state disaster grants;

(p) Home produce utilized for household consumption;

(q) Housing subsidies received from federal, state or local governments;

(r) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(s) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;

2. Senior health aides;

3. Senior companions;

4. Service Corps of Retired Executives (SCORE); and

5. Active Corps of Executives (ACE);

(u) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(v) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, or adult foster care;

(w) Payments made under the Low Income Home Energy Assistance Program (LIHEAP) under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(x) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(y) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance;

(z) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(aa) The principal of a verified loan;

(bb) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(cc) Income of an individual receiving SSI;

(dd) The essential person's portion of the SSI check;

(ee) Income of an individual receiving mandatory or optional state supplementary payments;

(ff) The advance payment or refund of earned income tax credit (EITC);

(gg) Payments made directly to a third party on behalf of the client by a nonresponsible person;

(hh) Child support received in a month for which the AFDC payment is suspended;

(ii) In-kind income;

(jj) Income of a technically ineligible child;

(kk) Payments made from the Agent Orange Settlement Fund;

(ll) AFDC back payments;

(mm) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(nn) Payments made from the Radiation Exposure Compensation Trust Fund; and

(oo) Up to $2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands.

(2) Applicant eligibility test. Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(d) Child care, for a child or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed:

1. $175 per month per individual for full-time employment; or

2. $150 per month per individual for part-time employment; or

3. $200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. These deductions shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Deductions from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in the employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or

5. The child care arrangement is terminated through no fault of the client; or

6. The available child care does not meet the needs of the child, for example, a disabled child; or

7. The parent is temporarily absent from work on approved educational leave; or

8. The JOBS participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls; or

9. The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section;

(c) Fails to report and increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

Section 5. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

(a) A stepparent;

(b) The spouse of a minor dependent child;

(c) The spouse of a specified relative other than a parent;

(d) A parent barred from receiving assistance due to failure to meet alien status; or

(e) A parent of a minor parent.

(2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:

(a) The first ninety (90) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for The appropriate family size, for:

1. The support of the individual; and

2. Any other person living in the home if:

a. His needs are not taken into consideration in the AFDC eligibility determination; and

b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.

(c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;

(d) Payments for alimony or child support to a person not living in the home by the individual; or

(e) Income of an SSI recipient who is listed in subsection (1) of this section; or

(f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the AFDC unit in the month received, in any subsequent month.

(3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.

(4) Resources. Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 6. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-AFDC income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

(a) Is no longer in existence; or

(b) Does not have the financial ability to meet the alien's needs.

(6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed $175;

2. An amount equal to the AFDC assistance standard for the appropriate family size of:

a. The sponsor; and

b. Other persons living in the household:

(i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and

(ii) Whose needs are not considered in making a determination of eligibility for AFDC;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or AFDC.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were an AFDC applicant in this state, less $1,500.

Section 7. Payment Maximum. (1) The AFDC payment maximum includes amounts for food, clothing, shelter, and utilities.

(2) Countable income is subtracted in determining eligibility for and the amount of the AFDC assistance payment, as follows:

Effective July 1, 1989

Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	$162	$394
2 persons	$196	$460
3 persons	$228	$526
4 persons	$285	$592
5 persons	$333	$658
6 persons	$376	$724
7 or more persons	$419	$790

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

Section 8. AFDC Recoupment. Except for those overpayments in administrative regulation 904 KAR 2:017, the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance

with Section 7 of this regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 9. Avoiding an Overpayment. (1) An AFDC recipient may voluntarily return a benefit check to avoid an overpayment if:

(a) The case is totally ineligible for the month for which the check is issued; and

(b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the client is due a refund as described in Section 10 of this administrative regulation.

Section 10. Refund. A client shall be due a refund in the following situations:

(1) The agency recoups an amount in excess of the actual overpayment;

(2) The agency offsets an overpayment and an underpayment and finds a balance owed to the client;

(3) A client voluntarily returns an AFDC check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the AFDC check was intended to cover, leaving a balance owed to the client.

Section 11. Correction of Underpayments. The following provisions apply to all AFDC payments:

(1) The department shall promptly correct an underpayment to:

(a) A current AFDC recipient; and

(b) One who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

Section 12. Material Incorporated by Reference. (1) Forms necessary for the determination of financial eligibility and recovery of overpayments in the AFDC program are incorporated effective December 1, 1993. These forms include:

(a) PA-30.2, revised 7/85;

(b) PA-35, revised 2/91;

(c) PA-36, revised 1/85;

(d) PA-412, revised 1/91; and

(e) PA-415, revised 11/89.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 24, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify the agency in writing by August 17, 1994 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Truett DeMoisey

(1) Type and number of entities affected: The type and number of entities affected by this amendment will be minimal. Current policy states that all income and resources of an SSI recipient shall not be counted for AFDC purposes. The new policy relates to retroactive SSI payments and is twofold. First, it clarifies retroactive SSI payments to an individual who is eligible for a retroactive SSI payment but is not eligible for ongoing SSI benefits. Secondly, it clarifies retroactive SSI payments made to an assistance unit for a decease child, stepparent or other individual who is not included in the AFDC assistance unit, but whose income is deemed to it. In the first clarification, retroactive nonrecurring lump sum SSI payments, made to an AFDC recipient, shall not be counted as income or a resource for AFDC purposes in the month paid and the next following month. Since these payments have been totally excluded in the past anyway, we believe this will impact only a minimal number of entities. In the second clarification the retroactive SSI payment to the deemer is counted in determining the eligibility and amount of payment to the AFDC unit in the month it is received only. Again, this change will be a minimal impact to those receiving AFDC benefits. Since the department currently excludes all income and resources of an SSI recipient, we do not have a method of knowing the exact number that will be affected. In regards to the Jobs Training Partnership Act (JTPA) change, previous policy had excluded earned income received by a child from JTPA program participation in all but one component, On the Job Training (OJT), by dependent children receiving AFDC. This change is anticipated to have a minimal impact, as the AFDC school attendance requirement precludes most AFDC children from participating in OJT.

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimal cost to those AFDC recipients who income is deemed available to an AFDC household. Minimal savings to households with a dependent child in the JTPA OJT component.

2. Continuing costs or savings: See first year.

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: Minimal savings to the department as a result of counting income deemed available to the household when determining eligibility and amount of payment in the month a retroactive SSI payment is received. Minimal cost to the agency as a result of excluding JTPA OJT income of dependent children.

2. Continuing costs or savings: See first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were explored regarding SSI income policy as this change is a federal mandate. The state opted to exclude JTPA OJT income received by a dependent child in an

effort to simplify and streamline policy and encourage participation in JTPA activities which may lead to self-sufficiency.

(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? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with the federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 233.20(a)(1)(ii) and (3)(x), 45 CFR 233.20(a)(13)(ii), 45 CFR 233.20(a)(3) and 45 CFR 233.20(a)(11). "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period, Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance.

2. State compliance standards. Same as item #1.

3. Minimum or uniform standards contained in the federal mandate. Retroactive nonrecurring lump sum SSI payments made to an AFDC recipient shall be excluded from consideration in the month received and the following month. Payments received by a person not included in the case, but whose income shall be deemed, shall be considered in the month of receipt only.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.There are no stricter standards being applied.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:010. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, PL 103-66 [~~102-237~~]

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [~~is required~~] to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Food Stamp Program.

Section 1. Definition of terms utilized in administrative regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form designed or approved by Food and Nutrition Service (FNS) that is completed by:

(a) A household member; or

(b) An authorized representative.

(2) "Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

(3) "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

1. Making application for the program;

2. Obtaining the coupons; and

3. Using the coupons.

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

1. Has been designated in writing by:

a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency officials is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

a. A state agency employee who is involved in the certification or issuance processes;

b. A retailer that is authorized to accept food coupons; and

c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

1. Misrepresented a household's circumstances;

2. Knowingly provided false information pertaining to the household; or

3. Made improper use of coupons.

(4) "Boarder":

(a) Means an individual to whom a household furnishes lodging and meals for reasonable compensation;

(b) "Reasonable compensation" is determined:

1. By considering only the amount paid for meals; and

2. Provided that the amount paid for meals is distinguishable from the amount paid for lodging.

(c) A reasonable monthly payment for meals shall be:

1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or

2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.

(d) A boarder is ineligible to participate in the program independent of the household providing the board.

(5) "Certification" means the action necessary to determine eligibility of a household including:

(a) Interview;

(b) Verification; and

(c) Decision.

(6) "Communal dining facility" means:

(a) A public or nonprofit private establishment, approved by FNS, that prepares and serves meals for elderly persons;

(b) A public or private nonprofit establishment (eating or otherwise) that feeds:

1. Elderly persons; and

2. SSI recipients and their spouses;

(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and

(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:

1. Elderly persons; and

2. SSI recipients and their spouses.

(7) "Coupon" means:

(a) Any stamp;

(b) Coupon; or

(c) Type of certificate; that is

(d) Issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food.

(8) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(9) "Disabled" means:

(a) An individual who receives:

1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;

2. Disability or blindness payments under:

a. 42 USC 301 to 306;

b. 42 USC 401 [~~402~~] to 433;

c. 42 USC 1201 to 1206;

d. 42 USC 1351 to 1355; or

e. 42 USC 1381 to 1385;

3. Optional or mandatory state supplementation;

4. Disability retirement benefits from a:

a. Federal;

b. State; or

c. Local governmental agency; and

d. Resulting from a disability considered payment under 42 USC 221(i);

5. Annuity payments under:

A. 45 USC 231(a); and

b. Is determined to qualify for Medicare by the Railroad Retirement Board; or

c. Is disabled based upon the criteria used under 42 USC 1381 to 1385; or

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration (VA) or paid as total (100 percent) by the VA under Title 38 of the United States Code;

(c) A veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the VA to be permanently incapable of self-support under Title 38;

(f) A surviving spouse or surviving child of a veteran and considered by the VA to be entitled to:

1. Compensation for a service-connected death;

2. Pension benefits for a nonservice-connected death under Title 38; and

3. Has a disability considered permanent under 42 USC 221(i);

(g) An individual in receipt of disability related medical assistance under 42 USC 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having his [~~their~~] entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(10) "Drug addiction or alcoholic treatment and rehabilitation program" means any:

(a) Drug addiction; or

(b) Alcoholic treatment and rehabilitation program;

(c) Conducted by:

1. A private nonprofit organization; or

2. Institution that is certified as responsible for the administration of the state's program for:

a. Alcoholics; or

b. Drug addicts; by

(i) The cabinet; or

(ii) Agencies designated by the Governor.

(11) "Elderly" means an individual who is:

(a) Age sixty (60) or older; or

(b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application.

(12) "Eligible foods" means any of the following:

(a) Any food or food product intended for human consumption except:

1. Alcoholic beverages;

2. Tobacco;

3. Hot foods; and

4. Hot food products prepared for immediate consumption;

(b) Seeds and plants to grow foods for the personal consumption by eligible households;

(c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;

(d) Meals served by a communal dining facility for:

1. The elderly;

2. SSI households; or

3. To both; and

4. To households eligible to use coupons for communal dining;

(e) Meals prepared and served by an authorized drug addiction or alcoholic treatment and rehabilitation center to:

1. Narcotic addicts;

2. Alcoholics; and

3. Their children; [~~eligible households;~~]

(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or disabled as defined in subsection (9) of this section.

(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;

(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility shall:

1. Be a nonprofit establishment;

2. Be a licensed food service establishment; and

3. Provide meals to the homeless.

(13) "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4).

(a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 904 KAR 3:035, Section 5(3) and (4).

(b) The following are excluded household members and shall not participate as a separate household:

1. An ineligible alien;

2. An individual disqualified for failure to provide a social security number;

3. An individual disqualified for intentional program violation; or

4. An individual disqualified for failure to comply with work or workforce requirements.

(14) "Employment and training program" means a program consisting of one (1) or more of the following components:

(a) Work;

(b) Training;

(c) Education; or

(d) Job search.

(15) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(16) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture.

(17) "Group living arrangement":

(a) Means a public or private nonprofit residential setting that:

1. Serves no more than sixteen (16) residents; and

2. Is appropriately certified.

(b) To be eligible, a resident shall be blind or disabled as defined in subsection (9) of this section.

(18) "Head of household" means the person in whose name the application for participation is made as:

(a) Having primary financial responsibility for the household;

(b) Being an adult parent of a child of any age and living in the household; or

(c) An adult having parental control over a child under the age of eighteen (18) and living in the household.

(19) "Household" means:

(a) An individual who:

1. Lives alone; or

2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or

(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

(c) The following individuals shall be treated as a group of individuals who customarily purchase food and prepare meals together for home consumption even if they do not do so:

1. Spouses who live together;

2. A parent and his child twenty-one (21) years of age or younger who live together, unless the child is:

a. Himself a parent and living with his child; or

b. Married and living with his spouse.

3. A child, excluding a foster child, under eighteen (18) years of age who lives with and is under parental control of a person other than his parent, together with the person exercising parental control.

(d) Notwithstanding the preceding sentences, the following individual shall be considered, together with any of the others who is his spouse, an individual household, without regard to the purchase of food and preparation of meals, if the income as determined under 7 USC 2014(d) of the others, excluding the spouse, does not exceed the poverty line, as described in 7 USC 2014(c)(1) by more than sixty-five (65) per centum:

1. An individual who lives with others;

2. An individual who is sixty (60) years of age or older; and

3. An individual who is unable to purchase and prepare meals because he suffers, as certified by a licensed physician, from a:

a. Disability which would be considered a permanent disability under 42 USC 421(i); or

b. A severe, permanent and disabling physical or mental infirmity which is not symptomatic of a disease;

(e) In no event shall any:

1. Individual; or

2. Group of individuals;

3. Constitute a household if they reside in an:

a. Institution;

b. Boarding house; or

c. Live with others and pay compensation to the others for meals.

(f) The following shall not be considered a resident of an institution and shall be considered an individual household:

1. A resident of federally subsidized housing for the:

a. Elderly;

b. Disabled or blind recipients of benefits as defined under subsection (9) of this section;

2. A resident in a public or private nonprofit group living arrangement that:

a. Serves no more than sixteen (16) residents; and

b. Is certified by the appropriate state agency or agencies under regulations under 42 USCA 1382e(e); or

c. Is certified under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under this section;

3. A temporary resident of a public or private nonprofit shelter for battered women and children;

4. A resident of a public or private nonprofit shelter for individuals who:

a. Do not reside in a permanent dwelling; or

b. Have no fixed mailing address; and

c. Are otherwise eligible for coupons; and

5. A narcotics addict or alcoholic who together with his child live under:

a. The supervision of a private nonprofit institution; or

b. A publicly operated community mental health center, for the purpose of regular participation in a drug or alcoholic treatment program.

~~[(19) "Household" means an individual living alone or with others, or a group of individuals living together where living quarters are shared.~~

~~(a) A household may be composed of any of the following individuals or groups of individuals specified in subsection (19)(b) of this section, provided that such individuals or groups of individuals are not:~~

~~1. Residents of an institution;~~

~~2. Residents of a commercial boarding house; or~~

~~3. Living with others and paying compensation to others for meals and lodging except as otherwise specified in subsection (4) of this section.~~

~~(b) A household may be composed of:~~

~~1. An individual living alone;~~

~~2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;~~

~~3. A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption;~~

~~4. An individual who is:~~

~~a. Sixty (60) years of age or older (and the spouse of such individual);~~

~~b. Living with others; and~~

~~c. Unable to purchase and prepare meals because he:~~

~~(i) Suffers from a disability considered permanent under 42 USC; or~~

~~(ii) Suffers from a nondisease related, severe, permanent disability; and~~

~~d. Provided that the income of the others, excluding the income of the individual's spouse, with whom the individual resides does not exceed 165 percent of the federal income poverty guidelines.~~

~~(c) In no event shall separate household status or nonhousehold member status be granted to:~~

~~1. Parents and natural, adopted or stepchildren, unless:~~

~~a. At least one (1) parent is elderly or disabled as defined in subsection (10) of this section; or~~

~~b. Unless three (3) generations live together and one (1) of the children has minor children and meals are prepared separately;~~

~~2. A child under eighteen (18) years of age, under the parental control of an adult member of the household;~~

~~3. A spouse of a member of the household;~~

~~4. Siblings (natural, adopted, half or stepbrothers and sisters), unless:~~

~~a. At least one (1) sibling is elderly or disabled as defined in subsection (10) of this section; or~~

~~b. One (1) sibling has a minor child and meals are prepared separately.]~~

(20) "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(21) "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(22) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

(a) College;

(b) University; and

(c) Vocational or technical school.

(23) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.

(a) A "meal delivery service participant" shall include:

1. An elderly person and his spouse;

2. The physically or mentally disabled [~~handicapped~~]; and

3. A person otherwise disabled and his spouse.

(b) The cabinet shall contract with any of the following "meal delivery service" providers:

1. A political subdivision;

2. A private nonprofit organization; or

3. A private establishment.

(24) "Medicaid" means medical assistance under 42 USC 1396.

(25) "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in a public assistance (PA) household grant.

(26) "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(27) "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.

(a) The following shall be considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:

1. Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.

2. Live-in-attendant. An individual who resides with a household to provide medical, housekeeping, child care or other similar personal services.

3. Other. Another individual who shares living quarters with the household but who does not customarily purchase food and prepare meals with the household.

(b) The following shall be considered as a nonhousehold member, ineligible to participate in the program as a separate household, and treated as described in 904 KAR 3:035:

1. An ineligible student;

2. A person disqualified for noncompliance with the work requirements;

3. A border;

4. A resident of an institution, except as provided in subsection (17) of this section;

5. A striker, unless:

a. The household was eligible the day prior to the strike; and

b. The household is eligible at the time of application;

6. A household disqualified due to voluntary quit provisions.

(28) "Overissuance" means the amount by which coupons issued to a household exceeds the amount the household was eligible to receive.

(29) "Public assistance" (PA) means any of the programs authorized under 42 USC 601 to 686 including:

a. Old age assistance;

b. Aid to families with dependent children (AFDC);

c. Aid to the blind;

d. Aid to the permanently and totally disabled; and

e. Aid to aged, blind or disabled.

(30) "Retrospective budgeting" means the computation of a household's food stamp allotment for an issuance month based on actual income and circumstances which existed in a previous month.

(31) "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(32) "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(33) "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101.

(34) "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(35) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include:

(a) A stoppage by reason of expiration of a collective-bargaining agreement; and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is exempt from work registration for reasons other than employment; and

2. The exemption existed on the day prior to the strike.

(36) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(37) "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);

2. A child six (6) through eight (8); and

3. A child nine (9) through eleven (11) years of age; and

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(38) "Underissuance" means the amount that the allotment to that the household was entitled exceeds the allotment which the household received.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 30, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, 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: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: The amendment relating to the simplification of the definition of "household" will grant greater flexibility for recipients to determine who will be included in their food

stamp case and ease the administrative burden for field staff. The amendment relating to children who reside with parents who are participating in drug or alcohol treatment programs will expand eligibility for such children, thus, having a positive effect on the family while engaged in such programs. The number of families affected by the amendments is indeterminable.

(a) Direct and indirect cost or savings to those affected: None

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First Year: None

2. Continuing cost 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: None. The amendments are federally mandated.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. The federal statute at 7 USC 2014 (b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the Federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR parts 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 103-66, Sections 13931 and 13932.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions relating to the definition of "household" and the eligibility of children who reside with parents who are participating in drug and alcohol treatment programs are consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by PL 103-66.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:020. Financial requirements.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.8, 273.9, 273.10, 273.11, PL 103-66 [~~101-508, 101-624, 102-237~~]

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Financial Eligibility Requirements. (1) In accordance with regulations promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:

(a) Income limitations; and

(b) Resource limitations.

(2) Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(3) The income eligibility standards shall be derived from the Office of Management and Budget's (OMB) nonfarm income poverty guidelines.

Section 2. Countable Income. All income from any source shall be counted, except income specifically excluded in Section 3 of this administrative regulation, including [~~but not limited to~~]:

(1) Wages earned by a household member, including all wages received by a striker in accordance with the provision at 904 KAR 3:035, Section 6(9).

(2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business;

(3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursements;

(4) Payments under 42 USC 1451 shall be considered earned income unless specifically excluded in Section 3 of this administrative regulation;

(5) The earned or unearned income of an eligible household member or nonhousehold member as set forth in 904 KAR 3:035, Section 6(3) and 4;

(6) Assistance payments from federal or federally aided public assistance including:

(a) Supplemental security income (SSI);

(b) Aid to families with dependent children (AFDC);

(c) General assistance (GA) programs; or

(d) Other assistance programs based on need;

(7) Annuities;

(8) Pensions;

(9) Retirement, veteran's or disability benefits;

(10) Worker's or unemployment compensation;

(11) Strike pay;

(12) Old-age survivors or Social Security benefits;

(13) Foster care payments for children or adults, except as excluded in Section 3(16) of this administrative regulation;

(14) Gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least twenty (20) hours a week;

(15) Wages earned by a household member which are garnisheed or diverted by an employer and paid to a third party for a household expense;

(16) Support or alimony payments made directly to the household from nonhousehold members. This includes any portion of such payments returned to the household by the cabinet;

(17) The portion of scholarships, educational grants, fellowships, deferred payment loans for education, and veterans educational benefits which are not excludable under Section 3(6) of this administrative regulation;

(18) Payments from government sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit;

(19) Monies withdrawn or dividends which are or could be received from a trust fund;

(20) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 904 KAR 3:035, Section 6(12);

(21) The portion of means tested Assistance monies from a federal, state, or local welfare program which are withheld for purposes of recouping an overpayment which resulted from the household's intentional failure to comply with that program's requirements;

(22) Earnings to an individual who is participating in on-the- job training programs under 29 USC 1501 unless the individual is under nineteen (19) years of age and under the parental control of another adult member; and

(23) Portions of Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401 in excess of $2,000 per payment per individual, effective September 1, 1989; and

~~(24) Payments from the Department of Housing and Urban Development which are paid directly to the household or utility provider as a utility subsidy~~].

Section 3. Income Exclusions. The following payments shall not be considered as income:

(1) Money withheld from an assistance payment, earned income or other income source, or monies received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, except in Section 2 (14) of this administrative regulation;

(2) Child support income shall be considered as follows:

(a) Child support payments received by AFDC recipients which must be transferred to the Division of Child Support Enforcement to maintain AFDC eligibility shall be excluded;

(b) Any portion of child support monies returned to the AFDC household by the cabinet shall not be excluded;

(3) Any gain or benefit which is not in the form of money payable directly to the household.

(4) Money payments that are not legally obligated and otherwise payable directly to a household, but are paid to a third party for a household expense;

(5) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of thirty (30) dollars in a quarter.

(6) Educational income shall be excluded as follows:

(a) Educational income, including [~~but not limited to~~]:

1. Educational loans on which payment is deferred;
2. Grants;
3. Scholarships;
4. Fellowships;
5. Veteran educational benefits;
6. And the like;

(b) Awarded to a household member enrolled at one (1) of the following recognized institutions as defined by 904 KAR 3:010, Section 1(22):

1. Institution of postsecondary education;
2. School for the handicapped;
3. Vocational education program; or
4. A program that provides for completion of a secondary school diploma or the equivalent thereof;

(c) Is excluded to the extent that it does not exceed the amount used for or made available as an allowance determined by such:

1. School;
2. Institution;
3. Program; or
4. Other grantor; for

(d) Expenses of the student, including:

1. Tuition;
2. Mandatory fees related to the pursuit of the course of study involved, including the rental or purchase of any:
   a. Equipment;
   b. Material; and
   c. Supplies;
3. Books;
4. Supplies;
5. Transportation;
6. Other miscellaneous personal expenses (other than living expenses);
7. Origination fees for such loans; and
8. Insurance premiums for such loans.

(7) All loans from private individuals or commercial institutions, other than educational loans on which repayment is deferred;

(8) Reimbursements for past or future expenses, other than normal living expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household;

(9) Money received and used for the care and maintenance of a third party beneficiary who is not a household member;

(10) The earned income of a child [~~children~~] who is:

(a) A member [~~Are members~~] of the household;

(b) An elementary or secondary school student [~~Are students at least half-time~~]; and

(c) Age twenty-one (21) years or younger; [~~Have not attained their 18th birthday; and~~

~~(d) Are under the parental control of another household member;~~]

(11) Money received in the form of a nonrecurring lump-sum payment;

(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, such losses shall be offset against any other countable income in the household;

(13) Any income specifically excluded by any other federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program;

(14) Energy assistance payments made under:

(a) Any federal law, including utility reimbursements made by:

1. The Department of Housing and Urban Development (HUD); and

2. The Farmers Home Administration (FmHA); [~~laws~~] or

(b) A state or local law if certified as excludable energy payments by the FNS;

(15) Cash donations based on need received [~~on or after February 1, 1988~~] from nonprofit charitable organizations, not to exceed $300 in a federal fiscal year quarter;

(16) Foster care payments for foster children when the household requests that the foster children be excluded from the household in determining eligibility [~~(effective February 1, 1989)~~];

(17) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II [~~(effective February 1, 1989)~~];

(18) Monies received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit).

(19) Indian Per Capita payments made pursuant to 25 USC 459,

25 USC 1261 and 25 USC 1401, as distribution from judgment awards and trust funds of $2,000 or less per individual per payment[~~, effective September 1, 1989~~].

(20) Any amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household member as provided under 41 USC 1382a(b)(4)(B)(iv).

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to those households whose incomes fall at or below the applicable standards as established by FNS and which are set forth below:

(1) Households which contain a member who is elderly or disabled as defined in 904 KAR 3:010, Section 1(9) or (11) shall have their net income compared to 100 percent of the federal income poverty guidelines.

(2) Households in which all members are recipients of AFDC or SSI shall be categorically eligible and shall not be required to meet either the gross or net income eligibility standards.

(3) All other households shall have their gross income (total income after excluded income has been disregarded but before any deductions have been made) compared to 130 percent of the federal income poverty guidelines and their net income compared to 100 percent of the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable income deductions:

(1) A standard deduction per household per month which shall be periodically adjusted by FNS to reflect changes in the cost of living for a prior period of time as determined by FNS;

(2) Twenty (20) percent of gross earned income;

(3) Payments for the actual cost for the care of:

(a) A child; or

(b) Other dependent;

(c) Not to exceed:

1. $200 [~~$160~~] per month per dependent child under age two (2); and

2. $175 per month for each other dependent;

(d) When necessary for a household member to:

1. [~~(a)~~] Seek, accept or continue employment;

2. [~~(b)~~] Attend training; or

3. [~~(c)~~] Pursue education preparatory to employment;

(4) The monthly shelter cost deduction shall be determined as follows:

(a) Monthly shelter cost in excess of fifty (50) percent of the household's income after all other allowable deductions have been made.

(b) The shelter deduction shall not exceed the excess shelter maximum established by FNS, except that households containing an elderly or disabled member shall not be subject to the maximum.

(c) The excess shelter maximum shall be adjusted periodically by FNS to reflect changes in the cost of living for a prior period of time.

(d) Allowable monthly shelter expenses shall include the following expenses:

1. Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on the [~~such~~] payments;

2. Property taxes, state and local assessments, and insurance on the structure itself, but no separate cost of insuring furniture or personal belongings;

3. The cost of:

a. Heating and cooking fuel;

b. Cooling;

c. Electricity;

d. Water and sewage;

e. Garbage and trash collection fees;

f. The telephone standard deduction; and

g. Fees charged by the utility provider for the initial installation of the utility;

4. The shelter costs for the home if temporarily not occupied by the household because of:

a. Employment or training away from home;

b. Illness; or

c. Abandonment caused by a natural disaster or casualty loss; and

d. If the household intends to return to the home;

e. The current occupants of the home are not claiming the shelter costs for food stamp purposes; and

f. The home is not leased or rented during the absence of the household; and

5. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood, unless such costs are reimbursed by:

a. Private or public relief agencies;

b. Insurance companies; or

c. From any other source.

(e) The cabinet shall develop a standard utility allowance for use in calculating shelter cost for those households which receive Low Income Home Energy Assistance Program (LIHEAP) benefits or which incur heating or cooling (by air conditioning units only) costs separate and apart from their rent or mortgage payments.

(f) If the household is not entitled to the utility standard or does not choose to use the utility standard, it may claim actual utility expenses for any utility which it does pay separately.

(g) The standard utility allowance shall be adjusted at least annually to reflect changes in the cost of utilities.

(h) The cabinet shall use a homeless shelter standard of shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the calendar month, unless that household verifies higher expenses.

(5) Allowable medical expenses, excluding special diets, in excess of thirty-five (35) dollars per month incurred by any household member who meets the definition of elderly or disabled as specified by 904 KAR 3:010, Section 1(10), including, but not limited to:

(a) Medical and dental care;

(b) Hospitalization or outpatient treatment and nursing care;

(c) Medication and medical supplies;

(d) Health and hospitalization premiums; and

(e) Dentures, hearing aids, eyeglasses and prosthetics.

Section 6. Resources. (1) Uniform national resource standards of eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a household's liquid and nonliquid resources, not exempt under Section 7 of this administrative regulation exceed:

(a) $3000 for all households with one (1) or more members, when at least one (1) member is sixty (60) years or older; or

(b) $2000 for any [~~all~~] other household[~~s~~].

(3) A household[~~s~~] which is [~~are~~] categorically eligible as specified in Section 4(2) of this administrative regulation shall be considered as having met the food stamp resource requirement.

(4) A household member who receives AFDC or SSI benefits shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limits as specified in subsection (2) of this section.

Section 7. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others.

(2) Household goods;

(3) Personal effects including one (1) burial plot per household member;

(4) The cash value of life insurance policies; and

(5) Pension funds (except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts shall not be exempt);

(6) Prepaid burial plans if a contractual agreement for repayment must be signed in order to withdraw any funds;

(7) Licensed or unlicensed vehicles as specified in Section 8 of this administrative regulation;

(8) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis;

(9) Property which is essential to the employment or self-employment of a household member;

(10) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value;

(11) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended;

(12) Resources whose cash value is not accessible to the household;

(13) Resources which have been prorated as income;

(14) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs;

(15) Resources which are excluded for food stamp purposes by express provision of federal statute;

(16) Up to $12,000 to Aleuts and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for hardships experienced during World War II;

(17) Income which is withheld by the employer to pay certain expenses directly to a third party as a vendor payment to the extent that the remainder of the withheld income is not accessible to the household at the end of the year;

(18) Indian Per Capita payments made pursuant to 25 USC 459, 25 USC 1261, and 25 USC 1401, as distribution from judgment awards and trust funds, of $2,000 or less per individual per payment.

(19) Purchases of $2,000 or less which are made solely with Indian Per Capita payments after December 31, 1981 but prior to January 12, 1983; [~~and~~]

(20) The earned income tax credit (EITC) income received by any member of the household for a period of twelve (12) months from receipt if the member was:

(a) Participating in the Food Stamp Program at the time the credits were received; and

(b) Participated in the program continuously during the twelve (12) month period of exclusion; and [~~of an individual and his spouse for the month of receipt and the following month;~~]

(21) A resource, except a vehicle, which cannot be sold for a significant amount of funds for the support of the household.

Section 8. Vehicles. (1) The entire value of any licensed vehicle shall be excluded if the vehicle is:

(a) Used over fifty (50) percent of the time for income producing purposes;

(b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;

(c) Necessary for long distance travel, other than daily commuting, that is essential to the employment of a:

1. Household member; or

2. Ineligible alien; or

3. Disqualified person; if:

4. The resources of the individual are being considered available to the household.

(d) Used as the household's home;

(e) Necessary to transport a:

1. Physically disabled household member, ineligible alien, or disqualified person, if:

a. The resources of the individual are being considered available to the household; and

b. Regardless of the purpose of the transportation.

2. The exclusion is limited to one (1) vehicle per physically disabled household member.

3. A vehicle shall be considered necessary for the transportation of a physically disabled household member if:

a. The vehicle is specially equipped to meet the specific needs of the disabled person; or

b. The vehicle is a special type of vehicle that makes it possible to transport the disabled person; however

c. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member to be excluded.

(f) The value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the primary source of fuel or water for the household;

(2) The exclusion in subsection (1)(a) through (d) of this section shall apply when the vehicle is not in use because of temporary unemployment.

(3) A licensed vehicle not excluded under subsection (1) of this section shall:

(a) Individually be evaluated for fair market value; and

(b) That portion of the value which exceeds $4550 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles.

(4) A licensed vehicle shall also be evaluated for its equity value, except for:

(a) A vehicle excluded in subsection (1) of this section;

(b) One (1) licensed vehicle per household, regardless of the use of the vehicle; and

(c) Any other vehicle used to transport:

1. A household member; or

a. An ineligible alien; or

b. A disqualified household member; whose

c. Resources are being considered available to the household;

2. To and from:

a. Employment; or

b. Training; or

c. Education which is preparatory to employment; or

d. To seek employment in compliance with the Food Stamp Employment and Training Program as specified in 904 KAR 3:041.

(5) A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during a temporary period of unemployment.

(6) The equity value of a licensed vehicle not covered by this exclusion, and of an unlicensed vehicle not excluded by Section 7(7), (8) and (9) of this administrative regulation shall be attributed toward the household's resource level.

(7) In the event a licensed vehicle is assigned both a fair market value in excess of $4,550 and an equity value, only the greater of the two (2) amounts shall be counted as a resource.

Section 9. [~~8.~~] Transfer of Resources. A household[s] which has [~~have~~] transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: June 30, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, 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: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: Section 13932 of PL 103-66 will have a positive effect on the affected populations by extending food stamp participation to children who reside with parents participating in a drug or alcoholic treatment center. Increased costs of food stamp eligibility and allotment levels resulting from these amendments affect benefits only which are 100 percent federally funded. The type and number of entities affected by the promulgation of this administrative regulation is indeterminable.

(a) Direct and indirect cost or savings to those affected: None

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First Year: None

2. Continuing cost 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: None. The amendments are federally mandated.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. The federal statute at 7 USC 2014 (b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the Federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR parts 270 through 285. Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 103-66, Sections 13932.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provision relating to PL 103-66 is consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by PL 103-66.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

904 KAR 3:035. Certification process.

RELATES TO: KRS 194.050, 7 CFR 273.1, 273.2, 273.5, 273.10, 273.11, 273.12, 273.14, 273.21, 274.6, PL 103-66 [~~101-624~~]

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall [~~is required to~~] administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering the household's circumstances for the entire period for which each household is certified.

(2) The criteria shall be applicable to all households.

(3) Certain households require special or additional certification procedures as specified in Section 4 of this administrative regulation.

Section 2. Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided below, households shall be certified for at least three (3) months.

(a) If the certification process is completed after the 15th day of the month of application, a household eligible for a certification period of three (3) months or less shall, at the time of certification, have their certification period increased by one (1) month;

(b) A household shall be certified for one (1) or two (2) months, as appropriate if:

1. The household cannot reasonably predict what its circumstances will be in the near future; or

2. There is substantial likelihood of frequent and significant changes in income or household status.

(3) A household composed entirely of recipients of Aid to Families with Dependent Children (AFDC), or a combination of AFDC and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with its [~~their~~] AFDC reinvestigation date.

(4) The following households shall be certified for up to twelve (12) months:

(a) A household which is required to submit a monthly report[~~s~~].

(b) If other household circumstances are expected to remain stable, a household composed entirely of unemployable or elderly persons with very stable income; or

(c) A household whose primary source of income is from:

1. Self-employment; or

2. Regular farm employment with the same employer if:

a. The income can be readily predicted; and

b. Household circumstances are not likely to change.

(5) The following households shall be assigned a certification

period not to exceed six (6) months, including those household types specified in subsection (4) of this section.

(a) A household which is granted separate household status because:

1. The household consists of an individual and the individual's minor child;

2. The individual and child are living with the individual's parent or sibling; and

3. The individual purchases and prepares meals separately from the parent or sibling; or

(b) A household that consists of recipients of AFDC or a combination of AFDC and SSI, receiving up to fifty (50) dollars child support payments forwarded from the Division of Child Support Enforcement. These households shall be exempt from the monthly reporting requirements.

Section 3. Certification Notices to Households. The cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

(1) Notice of eligibility;

(2) Notice of denial; or

(3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application[s] for recertification as specified in 904 KAR 3:030, Section 1, as follows:

(1) If the household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits if the household is otherwise eligible; or

(2) If the household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of date of the application if the household is otherwise eligible.

Section 5. Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.

(1) A household with self-employed members shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period if:

1. Self-employment income represents a household's annual income; or

2. Self-employment income is received on a monthly basis which represents a household's annual support;

(b) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover;

(c) The income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year; or

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business.

(2) A household with boarders shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses;

(b) Deductible expenses include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with ineligible members shall be processed, as follows:

(a) Ineligible due to:

1. Intentional program violation;

2. Failure to comply with the work requirements; or

3. Failure to comply with workforce requirements:

a. Income and resources in their entirety shall be counted as income available to the remaining household members;

b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions; and

c. The ineligible member shall not be included when:

(i) Assigning benefit level;

(ii) Comparing monthly income with income eligibility standard; and

(iii) Comparing household resources with resource eligibility standard;

(b) Ineligible due to:

1. Failure to provide a Social Security number; or

2. Ineligible alien status:

a. All resources of ineligible members shall be considered available to the remaining household members;

b. A pro rata share of the ineligible member's income shall be attributed to remaining household members;

c. Earned income deduction shall be applied to pro rata share of earnings; and

d. The ineligible member's share of dependent care and shelter expenses shall not be counted;

4. The ineligible member shall not be included when:

a. Assigning benefit level;

b. Comparing monthly income with income eligibility standard; and

c. Comparing household resources with resource eligibility standard.

(4) A household with nonhousehold members shall be processed as follows:

(a) The income and resources of a nonhousehold member (other than those described in subsection (3) of this section) shall not be considered available to the household with whom they reside;

(b) If earned income of household members and nonmembers are combined into one (1) wage, the agency shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income if the nonmember's share cannot be identified;

(c) The nonmember shall not be included when:

1. Assigning a benefit level to the household;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standard.

(5) A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center shall have his case processed as follows:

(a) An eligible household shall include:

1. A narcotic addict;

2. An alcoholic; and

3. His child; [~~Eligibility shall be determined as a one (1) person household;~~]

(b) Certification shall be accomplished through an authorized representative;

(c) Food stamp processing standards and notice provisions shall apply to a resident recipient;

(d) Treatment center shall notify the agency of any changes in a resident's circumstances;

(e) Upon departure of the center, the resident shall be eligible to receive any remaining benefits, if otherwise eligible; and

(f) The organization or institution shall be responsible for knowingly misrepresenting household circumstances.

(6) A resident of a group living arrangement who is blind or disabled and receives retirees, survivors, and disabled individuals or SSI benefits shall have his case processed as follows:

(a) A resident shall apply on his own behalf or through use of the facility's authorized representative;

(b) Certification provisions applicable to all other households shall be applied;

(c) Responsibility for reporting changes depends upon who files the application:

1. If resident applies on his own behalf, the household shall report changes to the agency; or

2. If the center acts as authorized representative, the group living arrangement shall report changes;

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible; and

(e) The group living arrangement shall be responsible for knowingly misrepresenting household circumstances unless the household applied on its own behalf.

(7) A resident of a shelter for battered women and children shall have her case processed as follows:

(a) The shelter shall:

1. Have food and nutrition service authorization to redeem at wholesalers; or

2. Meet the federal definition of such a shelter;

(b) A shelter resident shall be certified for benefits, if otherwise eligible, if she is currently included in a former household which contains the person who abused her; and

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(8) An SSI recipient shall have his case processed as follows:

(a) Application may be filed at:

1. The Social Security Administration (SSA) Office; or

2. The local food stamp office;

(b) The cabinet shall not require an additional interview for applications filed at the SSA;

(c) The cabinet shall obtain all necessary verification prior to approving benefits;

(d) Certification periods shall conform to Section 2 of this administrative regulation; and

(e) Household changes in circumstances shall conform to Section 6 of this administrative regulation.

(9) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(10) Student households.

(a) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:

1. Between age eighteen (18) and fifty (50);

2. Physically and mentally fit; and

3. Enrolled at least half-time in an institution of higher education.

(b) The criteria in of this subsection shall not deem a household member ineligible if the member meets at least one (1) of the criteria specified in 904 KAR 3:025, Section 3(5).

(11) Sponsored aliens.

(a) Income of the sponsored alien shall:

1. Include that portion of the sponsor's and his spouse's income deemed to be that of the alien;

2. Be subject to appropriate income exclusions; and

3. Be reduced by:

a. Twenty (20) percent earned income disregard, if appropriate; and

b. An amount equal to the Food Stamp Program monthly gross income limit for a household size equal to the household size of the sponsor.

(b) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by $1500.

(c) The appropriate portions of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income for a period of three (3) years following the alien's admission for permanent residence into the United States.

(12) A household which is required, as specified in 904 KAR 3:025 [~~3:020~~], Section 3(6) [~~6(6),~~] to comply with mandatory monthly reporting criteria shall have its case processed as follows:

(a) The cabinet shall adopt a two (2) month system in which the issuance month is the second month following its corresponding budget month;

(b) There shall be up to three (3) beginning months of participation in this system, the first month and the two (2) months following:

(c) Eligibility and benefit calculation shall be determined prospectively for beginning months;

(d) Ongoing eligibility shall be determined by considering all factors of eligibility prospectively and determining benefits retrospectively;

(e) Eligibility factors causing a period of ineligibility which exceeds one (1) month shall be acted upon immediately;

(f) A monthly reporting household which is ineligible for a period not to exceed one (1) month shall be treated as follows:

1. The ineligible household's issuance shall be suspended for one (1) month.

2. If the suspended household remains ineligible after one (1) month, the cabinet shall terminate the household's participation; and

(g) The recertification form shall serve as the report required for that month in which a household must be recertified.

Section 6. Reporting Changes. (1) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.

(2) An applying household shall report all changes related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) If changes occur after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.

(3) A household which is required to report monthly, shall not be required to submit any reports of changes other than the reports required under Section 5(12) of this administrative regulation.

Section 7. Replacement Issuance. (1) The cabinet shall provide a replacement issuance to an eligible household if:

(a) Its authorization document was:

1. Not received in the mail;

2. Stolen from the mail;

3. Destroyed in a household misfortune;

4. Improperly manufactured;

5. Stolen after receipt; or

6. Mutilated;

(b) Its coupons were:

1. Not received in the mail;

2. Destroyed in a household misfortune;

3. Improperly manufactured; or

4. Mutilated;

(c) Food purchased with food stamps was destroyed in a household misfortune; or

(d) It received a partial coupon allotment.

(2) The cabinet shall not provide a replacement issuance to a household if after receipt:

(a) Coupons are:
1. Lost;
2. Stolen; or
3. Misplaced;
(b) Authorization documents are:
1. Lost; or
2. Misplaced;
(c) Coupons or authorization documents are totally destroyed in other than a disaster or misfortune; or
(d) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.

(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.

(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for disaster food stamp benefits pursuant to a disaster declaration by the FNS.

(5) A replacement issuance shall be provided to a household if:
(a) The household reports a loss timely:
1. Orally; or
2. In writing;
(b) The household provides a statement of nonreceipt; and
(c) The original authorization document or allotment has not been returned to the cabinet at the time of the request for replacement.

(6) The report specified in subsection (5)(a) of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that:
(a) An authorization document is stolen from the household; or
(b) The following items are destroyed in a household misfortune:
1. Authorization document;
2. Coupons; or
3. Food purchased with food stamps.

(7) In a mail issuance county, the report must be made:
(a) Within the period of intended use; unless
(b) The original issuance was made after the 20th of the month. The period of intended use shall be extended to the last day of the month following the month of application.

(8) The number of replacement issuances which a household may receive shall be limited to:
(a) A total of two (2) countable replacements in six (6) months for:
1. Authorization documents; or
2. Coupons:
a. Not received in the mail;
b. Stolen from the mail; or
c. Destroyed in a household misfortune.
3. Authorization documents stolen after receipt; and
4. Partial coupon allotments; and
(b) No limit shall be placed on the number of replacements for:
1. Partial allotments if the partial allotments were due to an error by the cabinet;
2. Authorization documents or coupons which were:
a. Improperly manufactured; or
b. Mutilated; or
c. Food purchased with food stamp benefits which was destroyed in a household misfortune.

(9) The replacement shall not be considered a countable replacement if:
(a) The original or replacement issuance is returned or otherwise recouped by the cabinet;
(b) The original authorization document is not transacted;
(c) The replacement authorization document is not transacted; or
(d) The replacement issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:
(a) In the amount of the loss of the household; and
(b) Up to a maximum of one (1) on the allotment; unless
(c) The issuance includes restored benefits which shall be replaced up to their full value.

(11) The cabinet shall provide a replacement issuance to an eligible household in accordance with 904 KAR 3:045, Section 4.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: June 30, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, 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: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey

(1) Type and number of entities affected: Section 13932 of PL 103-66 will have a positive effect on the affected populations by extending food stamp participation to children who reside with parents participating in a drug or alcoholic treatment center. Increased costs of food stamp eligibility and allotment levels resulting from these amendments affect benefits only which are 100 percent federally funded. The type and number of entities affected by the promulgation of this administrative regulation is indeterminable.
(a) Direct and indirect cost or savings to those affected: None
1. First Year: None
2. Continuing cost or savings: None
3. Additional factors increasing or decreasing cost (Note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect cost or savings: None
1. First Year: None
2. Continuing cost 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: None. The amendments are federally mandated.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. The federal statute at 7 USC 2014 (b) requires that the Secretary of the United States Department of Agriculture establish uniform national standards of eligibility for participation by households in the Food Stamp Program. The provision at 7 CFR 272.2(b) requires the state agency to enter into an agreement with the Federal government, thereby agreeing to administer the program in accordance with the provisions contained in 7 USC 2011 through 2021, and 7 CFR parts 270 through 285.

Therefore, the Food Stamp Program is administered in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 103-66, Section 13932.

2. State compliance standards. There are no differing state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provision relating to PL 103-66 is consistent with the federal mandate and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No. The provisions of this administrative regulation coincide with those mandated by PL 103-66.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Family Services
(Proposed Amendment)

905 KAR 1:010. Application for permission to place or receive child.

RELATES TO: KRS 199.011, 199.470[(4)], 199.471, 199.472, 199.473, 199.480, 199.490(3), 199.500, 199.520, 199.572, 199.590, 199.990, 615.030, Chapter 635, 1994 Ky. Acts ch. 242

STATUTORY AUTHORITY: KRS 194.050, 199.472

NECESSITY AND FUNCTION: This administrative regulation shall [is to] provide procedures for the application for permission to place or receive a child, the disposition of a child preceding the granting or denying of permission to place or receive a child, the investigation of the circumstances surrounding the biological [natural] parents of a child to be placed or received under the law of independent adoption and the determination of suitability of the proposed adoptive parents to receive the child. The [function of this] administrative regulation [is to] sets forth the procedure in independent adoptions from the filing [point] of an application to place or receive a child to the [point of the] filing of the petition to adopt. The administrative regulation includes provisions relating to obtaining health history from the biological parents and to determining the biological and legal parents' feelings about possible future contact with the adopted person.

Section 1. The application for permission to place or receive a child, the DSS-187 herein incorporated by reference, shall be filed in duplicate, in writing with the Secretary of the Cabinet for Human Resources in care of the Commissioner of the Department for Social Services, by means of certified or registered mail. A certified or cashier's check payable to the Kentucky State Treasurer for a nonrefundable fee of $150 shall be filed with the written application for permission to place or receive a child. The DSS-187 may be obtained at the various local Department for Social Services offices or at the central office in Frankfort.

Section 2. The application for permission to place or receive a child shall be considered officially filed when received in the office of the Commissioner of the Department for Social Services. The returned receipt of certified or registered mail shall be proof of the filing of the application. However, the application shall not be considered filed unless it contains the required information and is received together with the $150 fee pursuant to KRS 199.473(6) [(5)].

Section 3. Limitations to Filing. (1) In the case of twins who are available and suitable for adoption, an application shall not be accepted unless the proposed adoptive parents apply to receive both children.

(2) When an application for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous application has been withdrawn by a written request to the cabinet by one (1) of the parties involved.

Section 4. The application for permission to place or receive a child shall contain:

(1) Name and address of a person wishing to receive a child;

(2) Names and addresses of the biological mother and father and legal father of the child to be placed or received. If the identity of the father is unknown, that fact shall be stated;

(3) The name and date of birth or expected date of birth of the child to be placed or received;

(4) Present address of the child to be placed or received;

(5) A statement of whether custody of the child has been awarded to an agency or person other than the biological parents; and, if applicable, a copy of the custody order; [and]

(6) Names and addresses of attorneys, intermediaries or agents representing the respective parties involved in the proposed placement; and

(7) If the proposed receiving parent or parents reside in Kentucky, a statement as to whether the investigation of the proposed placement shall be completed by an adoption worker with the Department for Social Services or a licensed child placing adoption agency in Kentucky.

Section 5. The application for permission to place or receive a child shall be signed by the person wishing to receive a child, the person wishing to place the child, or by both parties involved.

Section 6. An application for permission to place or receive a child shall not be processed if, prior to the receipt of the application, the child was committed to the Cabinet for Human Resources by order of the district or circuit court.

Section 7. An application for permission to place or receive a child may be made prior to the birth of the child.

Section 8. If the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out of state, the requirements of KRS 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet can give approval for the child's placement.

Section 9. The child shall not be in the physical care, control or custody of the proposed adoptive family until the written approval of the Secretary of the Cabinet for Human Resources or his designee is received by the adoptive family. Upon a finding by the circuit court of circumstances that warrant the child shall be placed prior to the secretary's written decision on the application, the circuit court may grant the applicant temporary custody of the child pending the cabinet's decision. This provision shall not be used to circumvent the requirements of KRS 615.030, Interstate Compact on the Placement of Children. If either the child's custodial parent or parents or the persons wishing to receive the child reside out of state, the written approval of the compact administrator shall be given before the child's placement with the proposed receiving family can occur.

Section 10. [9.] The Cabinet for Human Resources may cooperate with the parents of the child in finding suitable temporary placement for the child, pending the disposition of the application for

permission to place or receive a child.

Section 11. [~~10.~~] During the time between the filing of the application for permission to place or receive a child and the decision of the Cabinet for Human Resources granting or denying the application, the responsibility for providing for the care of the child shall not rest with the Cabinet for Human Resources unless a court has placed the child with the cabinet, with the agreement of the cabinet, after the filing of the application. The responsibility shall remain with the parents of the child.

Section 12. [~~11.~~] The child shall not be physically placed in the care, control or custody of the proposed receiving parents until final written permission to receive the child has been granted by the Secretary of the Cabinet for Human Resources or his designee; however, if the child is found in the physical care of the proposed adoptive family without a circuit court order of temporary custody as provided by KRS 199.473(2), it is the responsibility of the applicants to arrange for the child's placement in a neutral setting within forty-eight (48) hours. If the child's custodial parent resides out of state and the child is found in Kentucky without the approval of the Interstate Compact on the Placement of Children, the child shall be removed from Kentucky and a neutral setting arrangement made within the state of the custodial parent's residence.

Section 13. [~~12.~~] When an application for permission to place or receive a child has been filed with the Secretary of the Cabinet for Human Resources, the Commissioner of the Department for Social Services shall cause an investigation to be made of the proposed receiving home, the best interest of the child. The investigation shall be completed by an adoption worker of the Department for Social Services, unless the applicant's state at the time of filing the DSS-187 that an adoption worker with a licensed child-placing agency will complete the placement investigation and submit the required report to the Secretary of the Cabinet for Human Resources.

Section 14. Investigation by Adoption Worker with a Child-Placing Adoption Agency. (1) Prior to filing an application for permission to receive a child, the person or persons wishing to receive a child may contract for a licensed child-placing adoption agency to complete a preliminary investigation pertaining to the home and background of the person or persons who wish to receive a child for an independent adoption. The preliminary investigation shall include:

(a) The DSS-190, Information to be Obtained from Receiving Parents, and the DSS-190A, Supplemental Information, herein incorporated by reference, from the prospective adopter;

(b) Verification of current marriage, prior divorce, or death of a prior spouse of the prospective adopter;

(c) The DSS-106, Child's Medical Record, and DSS-107, Medical Information for Foster and Adoptive Applicants, herein incorporated by reference, which provides documentation of a physical examination, current to within one (1) year, of all members of the applicant's household and a recommendation from the applicant's physician regarding the applicant's ability to parent;

(d) A minimum of three (3) personal references, including one (1) from a relative of the applicant;

(e) A minimum of two (2) financial references;

(f) A district court record search completed in the applicant's county of residence;

(g) Documentation by the adoption worker of a minimum of one (1) home visit and face-to-face interview with each applicant and members of the applicant's household; and

(h) Section I of the Independent Adoption Placement Investigation Report completed by the adoption worker in regard to the applicant's home and family background. The adoption worker shall include a determination of the applicant's suitability to proceed with an independent adoption.

(2) If an adoption worker for a licensed child-placing adoption agency determines at the completion of a preliminary investigation that the applicant does not appear suitable to proceed with an independent adoption, the worker shall notify the Department for Social Services, Adoption Section, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The applicants may contract with a licensed child-placing adoption agency for the completion of the independent adoption placement investigation required by the filing of the DSS-187, Application for the Permission to Place or Receive a Child. If the agency adoption worker had completed the preliminary investigation of the home and family background prior to the filing of the DSS-187, the worker shall meet with the proposed adoptive family to insure that the requirements remain valid and current within one (1) year. The placing parents shall be interviewed to determine their knowledge, understanding, and acceptance of the proposed placement and to obtain health and background information. The agency adoption worker shall discuss the child's background and proposed placement with the prospective receiving parent or parents and make a determination of the applicant's ability to meet the needs of the specific child and provide the child with a suitable home. The agency adoption worker shall complete the Independent Adoption Placement Investigation Report, herein incorporated by reference, for review and processing with the Interstate Compact, if applicable, and the secretary's placement decision.

Section 15. [~~13.~~] Interviews. (1) When the biological parents or legal father reside in Kentucky, the adoption worker [~~a representative of the Cabinet for Human Resources~~] shall make a diligent effort to interview the custodial biological parent of the child to be placed and the noncustodial, biological parent and legal father for the following purposes:

(a) To determine whether or not the biological mother and father are aware and accepting of the ethnic and religious background of the receiving parents;

(b) To determine whether or not they agree to the placement of the child with the proposed receiving parents;

(c) To obtain health history and sociological information on the child's family; and

(d) To determine the biological mother and father's feelings about possible future contact with the adopted person.

(2) The Cabinet for Human Resources may deny the application if the child's custodial parent refuses to be interviewed by the Cabinet for Human Resources representative or the appropriate Kentucky or out-of-state adoption worker [~~out-of-state agency representative~~].

(3) Efforts shall be made to have the biological mother and father and legal father, if different than the biological father [~~parents~~] interviewed, for the purposes specified in Section 13(1)(a) through (d)[~~, or to have home evaluations completed through interstate procedures~~] when the parents [~~or prospective adoptive families~~] live out of state. The [~~home evaluation for out-of-state prospective adoptive families and~~] interviews with out-of-state biological [~~birth~~] parents or legal father shall be accepted if conducted by the out-of-state public agency or by a licensed private adoption agency in the respective state if the public agency is unable or unwilling to provide the service.

(4) If after diligent efforts of the out-of-state public or private agency, the biological parents, legal father, or legal custodian of the child cannot be interviewed, or if the information and material cannot be obtained, the Secretary of the Cabinet for Human Resources or his designee shall not be precluded from approving the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 16. [~~14.~~] The Cabinet for Human Resources may deny the application if the custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family.

Section 17. The home evaluation for an out-of-state prospective adoptive family shall be accepted if conducted by the out-of-state public agency or by a licensed child-placing adoption agency in the respective receiving state if the public agency is unable or unwilling to provide the service.

Section 18. Upon completion of the investigation of the proposed placement [~~15. When the cabinet's investigation has been completed~~], the applicants shall be notified by registered or certified mail of the decision of the Secretary of the Cabinet for Human Resources or his designee, either granting or denying permission for the placement or receiving of the child. If the permission is granted, the child may be placed in the home of the receiving parents forthwith, if other requirements, including the requirements of the Interstate Compact on the Placement of Children, if applicable, have been met. If the permission is denied, the receiving parents or the birth parents may, within ten (10) days after notice of denial, appeal the decision to the circuit court of the county in which the adoption is proposed.

Section 19. At the time [~~16. When~~] a child has been placed in a proposed receiving home with the permission of the Secretary of the Cabinet for Human Resources or his designee, the proposed receiving parents may file the petition for adoption in the circuit court in the county of their residence [~~three (3) months after the date of the child's placement in their home~~] with the secretary's or his designee's written approval in accordance with KRS 199.470(3) [~~(4)~~] and 199.473. Subsequent to the filing of a petition in Kentucky to finalize an independent adoption made with the written approval of the secretary, the agency which completed the independent adoption placement investigation shall be responsible for the preparation of the confidential report to the court.

Section 20. [~~17.~~] Material Incorporated by Reference. (1) Forms necessary to implement this administrative regulation are herein incorporated by reference. [~~The application to place or receive a child is being incorporated by reference.~~]

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MASTEN CHILDERS II, Secretary
PEGGY WALLACE, Commissioner
APPROVED BY AGENCY: July 7, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1994, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 17, 1994: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are those individuals that request an application to place or receive a child pursuant to KRS 199.473. During FY'91 the Department for Social Services received 432 applications to place or receive a child. During FY'92 we received 413 applications and during FY'93 365 applications were officially filed. This amendment revises the administrative regulation to allow implementation of provisions of HB 191 enacted during the 1994 General Assembly.

(a) Direct and indirect costs or savings to those affected: Direct and indirect costs to the affected entities are in the payment of the $150 nonrefundable fee with the written application to place or receive a child pursuant to KRS 199.473(5). During FY'93 the costs were $54,750 which were received with the 365 applications.

1. First year: Direct and indirect costs to the affected entities are in the payment of the $150 nonrefundable fee with the written application to place or receive a child pursuant to KRS 199.473(5). During FY'93 the costs were $54,750 which were received with the 365 applications.

2. Continuing costs or savings: Excluding the statutory fee, there will not be any continuing costs or savings to the affected entities as the proposed amended regulations will allow implementation of provisions of HB 191 enacted during the 1994 General Assembly.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that independent adoptive applicants, who reside in Kentucky, may elect to contract with a licensed child-placing agency in Kentucky for the completion of their placement investigation. The private agency representative will complete the Independent Adoption Placement Investigation Report for review and processing with the Interstate Compact on the Placement of Children, if applicable, and the secretary's placement decision. Also the department standardized the required information to be submitted on specific forms that should expedite the submission process.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is the receipt of the fee that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child. The promulgating agency may see a decrease in the number of independent adoption investigations completed by local office staff, which will be offset by an increase in the number of inquiries and request for assistance to the central office adoption specialists.

(a) Direct and indirect costs or savings: The savings for the promulgating agency are the receipt of the fees that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child. The promulgating agency may see a decrease in the number of independent adoption investigations completed by local office staff, which will be offset by an increase in the number of inquiries and request for assistance to the central office adoption specialists.

1. First year: The savings for the promulgating agency are the receipt of the fees that will be used to offset the cost of subsidizing an adoptive parent for suitable care of a special needs child. The promulgating agency may see a decrease in the number of independent adoption investigations completed by local office staff, which will be offset by an increase in the number of inquiries and request for assistance to the central office adoption specialists.

2. Continuing costs or savings: Excluding the receipt of the fees and the additional staff time required for central office processing, there will not be any continuing cost or savings for the Department for Social Services as the proposed regulations allow implementation of provisions of HB 191 enacted during the 1994 General Assembly.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs, or effect competition for the Department for Social Services, because the proposed regulations allow implementation of provisions of HB 191 enacted during the 1994 General Assembly.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements except that the promulgating agency will allow that independent adoptive applicants, who reside in Kentucky, may elect to contract with a licensed child-placing agency in Kentucky for the completion of their placement investigation. The private agency representative will complete the Independent Adoption Placement

Investigation Report for review and processing with the Interstate Compact on the Placement of Children, if applicable, and the secretary's placement decision. Also the department standardized the required information to be submitted on specific forms that should expedite the submission process.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed regulations allow implementation of provisions of HB 191 enacted during the 1994 General Assembly.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or a duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulations.

(b) If in conflict, was an effort made to harmonize the proposed administrative regulation with the conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate proposed regulations.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it establishes statewide procedures for the application to place or receive a child and complies with KRS Chapter 13A.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Children's Residential Services
(Proposed Amendment)

905 KAR 1:310. Standards for child-placing agencies.

RELATES TO: KRS 199.011, 199.473, 199.640, 199.650, 199.660, 199.670, 600.020, 615.010, 615.030, 620.020, Chapter 625, 1994 Ky. Acts ch. 242

STATUTORY AUTHORITY: KRS 194.050, 199.640(3), 615.050

NECESSITY AND FUNCTION: KRS 199.640 requires that the cabinet issue administrative regulations relating to standards of care and service for child-placing agencies. This proposed administrative regulation combines provisions of 905 KAR 1:005.

Section 1. Definitions. (1) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(2) "Advisory board" means a group of citizens approved by the board of directors who lends advice, counsel, and support to an agency.

(3) "Aftercare" means services provided to the child after discharge from a child-placing facility.

(4) "Board of directors" means that group which is by law or charter delegated the responsibility for governing the agency.

(5) "Community resources" means services and activities available in the community that supplement those provided by the child-placing agency in the care and treatment of children.

(6) "Division" means the Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(7) "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of an agency.

(8) "Individual treatment plan (ITP)" means a plan of action developed and implemented to address the needs of an individual child.

(9) "Infant" means a child under two (2) years of age.

(10) "Placement services" means services as governed by KRS 199.011.

(11) "Preschool child" means a child under six (6) years of age.

(12) [~~(11)~~] "Program director" means the person responsible for supervising the day-to-day operation of the program for children served by the agency or facility.

(13) [~~(12)~~] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his environment.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Initial licensure.

1. If applying for an initial license, the agency shall provide the following:

a. A complete application as determined by the cabinet;

b. A licensure fee of $155;

c. A copy of the articles of incorporation;

d. A mission statement of purposes, objectives, scope of services provided, and intake policy specifying kinds of children to be accepted for care;

e. A copy of the constitution and bylaws;

f. A list of officers, board members, and advisory board members, if any, including addresses and professions;

g. Names and titles of officers and terms of office;

h. A list of all staff including positions or title and qualifications; and

i. Applications for child-placing facility licenses shall be in compliance with the applicable regulations or shall have submitted an acceptable plan for correction of violations relating to the particular child-placing facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. Representatives of the division shall have access to the child-placing facility at any time. Regulatory violations identified during inspections shall be transmitted in writing to the child-placing facility by the division. The child-placing agency shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the division shall notify the child-placing facility in writing of the acceptability of the plan. If a portion or all of the plan is unacceptable, the division shall specify the reasons for the unacceptability. In these cases, the child-placing facility shall modify or amend the plan and resubmit it to the division within ten (10) days.

2. A license shall be issued by the cabinet when the agency has been surveyed by the cabinet and it is determined that the agency qualifies for licensure.

(b) Renewal licensure. Agencies shall be relicensed annually from the date of issuance of the original license. To be eligible for relicensure, the agency shall:

1. Submit a renewal application;

2. Submit a relicensure fee of eighty-five (85) dollars; and

3. Comply with the applicable portions of this regulation.

(c) Every child-caring agency shall provide the following information as part of the annual inspection:

1. A list of officers, board members, and advisory board members, if any, including addresses and professions;

2. Names and titles of officers and terms of office; and

3. A list of all staff including positions or title and qualifications.

(d) The agency shall comply with its mission statement, child-caring program narrative, and all applicable federal and state regulations in regard to child-caring program operations.

(e) The agency shall have an annual audit completed by an independent accounting firm or a certified public accountant.

(f) All applications for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular child-placing facility. Compliance

with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. The inspection procedure for relicensure shall be the same as set forth in paragraph (a)1i of this subsection.

(g) The license shall specify the types of care and service the agency is authorized to provide based upon the application and inspection.

(h) The agency shall provide the types of care and services for which they are licensed.

(i) A license shall be issued for a specific physical location and for operation by a sponsoring organization.

(j) Licenses shall not be transferable.

(k) Notification of changes in the following shall be made to the division in advance to allow for approval before implementation:

1. Ownership or sponsorship;
2. Location;
3. Capacity; or
4. Services.

(l) The agency shall post its license in a place visible to the public.

(2) Board of directors.

(a) The agency shall have a board of directors consisting of a minimum of seven (7) members, the majority of whom shall be residents of Kentucky.

(b) The board of directors shall meet quarterly in every calendar year. Minutes of these meetings shall be taken and kept in written form.

(c) One (1) meeting of the board of directors shall be held at each agency location in every calendar year. If a board of directors has responsibility for multiple agency locations, a board committee may be appointed:

1. To meet at least once a year at each agency location; and
2. Shall submit a written report of this meeting to the full board.

(d) The board of directors shall employ an executive director. The division shall be notified in writing of a change in the facility's executive director within seven (7) days.

(e) The board of directors shall be responsible for and have the authority to ensure the continuing compliance with the requirements of all relevant federal, state or local laws or regulations.

(f) The board of directors shall conduct and approve an annual evaluation of the performance of the executive director.

(g) The board of directors shall approve a written annual budget for the agency which ensures funding to meet all operating requirements.

(h) The board of directors shall in consultation with the executive director approve and annually review all written policies of the agency.

(i) The board of directors shall obtain a criminal records check of prior convictions or pleas of guilty of the executive director prior to employment.

(j) The board of directors shall approve a mission statement delineating:

1. The purposes;
2. Objectives;
3. Scope of services to be provided; and
4. Intake policy specifying kinds of children to be accepted for care.

(3) Executive director.

(a) The duties of the executive director shall be determined by the board of directors and shall include the following responsibilities:

1. Select, employ, and terminate staff;
2. Develop and implement agency policies approved by the board of directors;
3. Provide professional help to the board of directors in:
   a. Carrying out their responsibilities;
   b. Interpreting the needs of the children and families served; and
   c. Assisting in periodic evaluation of the agency's services;
4. Supervise the preparation of an annual budget for board consideration;
5. Keep the board informed of financial needs;
6. Provide financial statements to the board of directors on a quarterly basis;
7. Operate within the established budget;
8. Attend board meetings;
9. Ensure that orientation is provided for new employees and continual training for staff; and
10. Delegate appropriate duties to other staff.

(b) If the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operations of the child-caring program.

(4) Staff qualifications. Persons hired after the effective date of this regulation as executive director shall possess the following qualifications:

(a) An executive director shall possess:

1. A master's degree in any of the following human services fields: social work; sociology; psychology; guidance and counseling; education; religion; Christian education; divinity; business administration; pastoral counseling; criminal justice; public administration; child care administration; nursing; other human service field related to working with families and children; and, two (2) years of work experience in management of a human services program; or
2. A bachelor's degree with a major in the areas listed above public administration, or child-care administration and four (4) years work experience in human services programs.

(b) Persons other than the executive director employed in positions responsible for supervising, evaluating, or monitoring social work or other professional staff shall possess:

1. A master's degree in the human services area including the areas of social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, public administration, or child-care administration; and
2. At least two (2) years work experience in the human services field.

(c) All licensed child-placing agencies shall have one (1) member of the social work staff designated as placement director who shall hold:

1. A master's degree in social work or a related field; or
2. A bachelor's degree in social work or a related field and a minimum of two (2) years professional child-placing experience in working with children and families including foster care or adoptive placements.

(d) A child-placing agency using the service of a social worker not on the staff of the agency shall document that the social worker meets the qualifications as required in paragraph (f) of this subsection. An agreement for this provision of service shall be on file at the agency and shall specify the qualifications of the social worker.

(e) Social workers shall be supervised by the placement director.

(f) Employees responsible for social work, counseling, or planning and coordinating services to children shall have at least a bachelor's degree in the human services field.

(g) Social services staff shall not carry a caseload of more than twenty (20).

(5) Personnel policies.

(a) Employees shall be at least eighteen (18) years of age.

(b) There shall be a written job description which shall be reviewed and revised for each position which:

1. Clearly describes the duties of the position and the skills necessary to fill the position; and
2. Identifies the position's immediate supervisor.

(c) Personnel upon employment shall receive written agency policies and procedures to include the following:

1. Salary plan;
2. Leave provisions;
3. Working conditions;

4. Fringe benefits;
5. Employment and termination;
6. Job descriptions;
7. Staff evaluation;
8. Provisions for staff development;
9. Employee grievance;
10. Disciplinary action; and
11. Child-caring program narrative.

(d) Personnel orientation. Personnel within one (1) month of initial employment shall receive an orientation to agency policies and procedures.

(e) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number, date of employment, and date of birth;
2. Evidence of current registration, certification, or licensure;
3. Records of participation of staff development;
4. Records of performance evaluation;
5. Criminal records check;
6. Records of physical exams related to employment;
7. Personnel actions;
8. Application for employment and resume or contract; and
9. Evidence of personnel orientation.

(f) If a criminal records check reveals a prior criminal conviction or plea of guilty to charges pursuant to KRS Chapter 510 or a Class A felony, the applicant shall not be employed.

(g) The agency shall have an ongoing staff development program for the administrative, professional, volunteer, and support personnel.

1. Records of attendance at workshops, conferences, and academic courses related to work responsibilities shall be kept on employees.

2. The staff development program shall be under the supervision of a designated staff member.

(h) An employee under indictment or legally charged with felonious conduct shall be immediately removed from contact with children until the person is cleared of the charge.

(i) Volunteers who perform similar functions as paid staff shall meet the same requirements and qualifications.

(6) Agency policies. There shall be written administrative policies which the agency follows covering all aspects of operation including:

(a) Administration;
(b) Personnel;
(c) Fiscal management;
(d) Case records;
(e) Child-placing program;
(f) Internal review and evaluation;
(g) Transportation of children;
(h) A description of organization structure, staffing, and allocation of responsibility and accountability; and
(i) A child-placing program narrative describing in detail:

1. The services offered;
2. Methods and protocols for service delivery;
3. Qualifications of personnel involved in the delivery of the services; and
4. Goals of the services.

(7) Internal review and evaluation.

(a) Each agency shall provide for and conduct a self-evaluation of overall agency performance and management of its services at least every three (3) years from the effective date of this regulation.

(b) Specific written criteria and procedures for evaluating the overall agency performance and management shall be established. These shall be approved by the board of directors.

(c) The required evaluation shall examine the following factors:

1. Child-placing program content in relation to the stated role and purpose of the agency;
2. Child-placing program effectiveness based on stated and measurable goals;
3. Roles of the board of directors and management staff;
4. Personnel policies;
5. Staffing patterns and job responsibilities;
6. Staff effectiveness;
7. Staff turnover, causes, and effects;
8. Staff training program;
9. Budgeting and fiscal management;
10. Placements, planned and unplanned discharges, and length of stay of children in care;
11. Content of the child-placing program as related to the needs of the child and family based upon a random review of casework plans; and
12. The service continuum from intake through aftercare.

(d) A copy of each evaluation shall be kept on file at the agency and a copy shall be given to each member of the board of directors.

(e) Accreditation by the Council on Accreditation sponsored by the Child Welfare League of America or the Joint Commission on Accreditation of Health Care Organization shall substitute for the three (3) year evaluation.

(f) The child-placing agency shall ensure that the rights of children and their families, including that of confidentiality, are protected in all phases of evaluation. Services shall not be denied or restricted to any client based upon participation in the evaluation process.

Section 3. Interstate Placements. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with all applicable provisions of KRS 615.030 to 615.040, Interstate Compact on Placement of [~~and~~] Children; and KRS 615.010, Interstate Compact on Juveniles.

(2) If a child committed to the cabinet makes a brief visit out of state, not accompanied by agency personnel, the agency shall obtain prior consent from the social worker in the Department for Social Services who has case responsibility.

(3) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placing agency.

Section 4. Orientation and Training of Foster and Adoptive Homes. Each child-placing agency shall provide orientation and training to prospective foster and adoptive parents to include the following:

(1) Agency program description with mission statement, information about the rights and responsibilities of parents, and background information about foster or adopted children.

(2) Examples of actual experiences from parents who have fostered and adopted special needs children to include:

(a) Examination of the stages of grief;
(b) Identification of the behaviors linked to each stage; and
(c) Consideration of the long-term effects of separation and loss on children.

(3) Examination of family functioning, values, and expectations of the adoptive or foster family. Identification of changes which may occur in the family unit with placement of a child and discipline issues.

(4) Examination of how a placement may affect family:

(a) Functioning;
(b) Adjustment problems;
(c) Identity issues; and
(d) Disruptions.

(5) Specific requirements and responsibilities of foster and adoptive families.

Section 5. Evaluation of Potential Foster Homes. (1) The functions of recruitment and response to inquiries by prospective foster parents shall be performed by the child-placing agency social work staff. An application shall not be given without an interview to determine if the application process may proceed.

(2) The agency shall be responsible for approving the home as acceptable for children based upon a home study and shall be conducted as a series of planned interviews and home visits by the social worker. Children shall be placed only in approved foster homes.

(3) The agency shall keep a written record of the findings of this study and the evidence on which these findings are based.

(4) The foster home study shall record personal interviews both joint and separate with all members of the household.

(5) The foster home study shall include the following information:

(a) Attitudes of household members toward placement of a foster child into the home;

(b) Observations of foster family functioning including interpersonal relationships and patterns of interaction;

(c) The foster parents' ability to accept the child's relationship with the child's natural parents;

(d) Information regarding nonfamilial relationships;

(e) Certification by a licensed physician regarding the family's physical ability to provide necessary care for the child;

(f) Standards of household safety, housekeeping, and cleanliness are acceptable;

(g) Water supply and sanitation compliance with all state and local health requirements;

(h) Suitability of in- and out-of-door play space according to the age and needs of the child;

(i) Accessibility of the home to the community resources;

(j) A criminal records check and child abuse registry check on any adult residing in the household;

(k) Verification of all marriages and divorces of the prospective foster parents; and

(l) A minimum of three (3) written references.

(6) An agency shall not have more than two (2) children under two (2) years of age placed in the same foster home at the same time except for:

(a) Sibling groups who may remain together.

(b) Temporary shelters that are limited to serving children under two (2) years of age.

(c) Homes where three (3) or more adults reside and the maximum number of infants shall not exceed three (3) at one (1) time.

(7) A foster home shall be selected for a particular child based upon the individual needs of the child.

(8) The worker shall explain the terms of each placement and the foster parents shall certify in writing that supervision from the agency will be allowed. This shall be documented in the case record.

(9) The total number of children shall not exceed six (6) in number, including the foster parent's own children, unless the needs of the individual child indicate the necessity of keeping sibling groups together. Justification for exceptions shall be documented in the record.

(10) A child shall not without prior notification to and written authorization from the Kentucky Interstate Compact Administrator:

(a) Be placed with persons who normally reside in another state; or

(b) Be permitted to go with any person to take up residence in another state.

(11) Homes providing care of foster children shall not be used simultaneously for any other social services, including day care centers or homes for the elderly. This shall not preclude foster parents being approved for adoption or adoptive parents being approved as foster parents.

(12) All approved foster homes in use shall be evaluated on an annual basis. The results of evaluations shall be recorded in the case record.

(13) Each agency shall have a written agreement which states the responsibilities of the agency and the foster parents.

(14) The child shall participate in the intake process and in the decision that placement is appropriate to the extent that the child's age, maturity and adjustment; family relationships; and circumstances necessitating placement justify participation.

(15) The agency shall maintain an ongoing orientation and training program for its foster families. Records of all orientation and training shall be maintained.

Section 6. Placement Process. The following shall be the responsibility of the child-placing agency with exception of those children committed or otherwise made the legal responsibility of the Cabinet for Human Resources. In these cases, services shall be coordinated by Cabinet for Human Resources and agency staff; however, final casework responsibility shall be the responsibility of the Cabinet for Human Resources.

(1) The agency social worker shall be responsible for developing an individual treatment plan (ITP) for each child and their biological family. The plan shall include the type and extent of services to be given the biological family to rehabilitate the home.

(2) The biological parents and child shall be included in developing the placement plan unless contraindicated.

(3) The foster placement shall be located as near as possible to the biological [~~natural~~] parent's home to facilitate visiting.

(4) There shall be a semiannual review of the child's home of origin [~~natural~~] home.

(5) Each child shall have a period of preparation for the placement unless circumstances preclude this preparation. The circumstances shall be documented in the case record.

(6) Preplacement visitation by the child under agency supervision shall be scheduled before final placement in the foster home unless circumstances, which shall be documented in the case record, preclude these visits.

(7) Prior to placement, the social worker shall hold meetings with the child to prepare him for the placement.

(8) Social services to the biological [~~natural~~] parents and the child shall be adapted to their individual capacities, needs, and problems. If parents refuse social services, it shall be documented in the record.

(9) Planning for the child regarding matters including but not limited to visitation, health, and education shall be developed with the parents, the social worker, and foster parents.

(10) Requests for a removal of a child from a foster home shall be explored immediately and documented by the social worker.

(11) Preparation for a child's return to the biological or home of origin [~~natural~~] family shall be supervised by a social worker. The biological [~~natural~~] family shall participate in planning for the child's return. If the child has not had regular contact with his [~~natural~~] family, plans for the child's return home shall include prior visits between the child and the family and at least one (1) preliminary visit of the child to his parents' home. If the child is committed to the Cabinet for Human Resources and the parents reside a considerable distance from the agency, attempts shall be made for providing services to the parents. If the agency is unable to provide services directly to the child's [~~natural~~] parents, the executive director of the agency shall request the Cabinet for Human Resources to provide services. These efforts shall be documented in the case record. Provisions shall be made for exchange of information at least quarterly and more often if circumstances warrant.

(12) The agency shall provide for the semiannual review of the children in foster care to assure that foster care continues to be the best plan for each child.

Section 7. Supervision of Children in Foster Homes. (1) The agency shall maintain continuing supervision of the child and foster home while the child is in placement. The agency shall assure that the child is receiving care in accordance with his needs. The agency shall provide information to the foster parents regarding the child's behavior and development.

(2) Upon placement of a child in a foster home, the responsible worker shall make at a minimum monthly supervisory visits to the

home. The individual needs of the child shall dictate if more frequent visitation is necessary. The number of contacts and the rationale shall be specified in the plan.

(3) The agency shall document every effort to see that the legal rights of parents and the child are protected and that the family ties are maintained between the child and his parents.

(4) Each child shall have clothing for his exclusive use comparable in quality and variety to that worn by other children with whom he will associate.

(5) The agency shall be responsible for seeing that children comply with state school attendance laws.

(6) The agency shall secure psychological and psychiatric services, vocational counseling, and other services if indicated by the child's needs.

(7) If the plan for long-term foster care for a child has been determined and justified, the plan shall be reassessed annually.

Section 8. Maintenance of Foster Care Records. (1) The agency shall maintain records on each child, his family, and on the foster families. These records shall show the reasons for placement changes and steps taken to insure success.

(2) Social work staff shall document in case records the results of regular social service and progress toward goals which have been established for the child and family.

(3) Copies of all correspondence relating to the child shall be maintained.

(4) The date of discharge and the name and address of the persons or organization to whom the child is discharged shall be recorded.

(5) The discharge recording shall reflect the reason for the discharge.

(6) All case records shall be maintained in conformity with existing laws and regulations pertaining to confidentiality, KRS 61.878, 199.430(3), 199.640, and 200 KAR 1:020.

Section 9. Evaluation of Potential Adoptive Homes. (1) The agency shall select as adoptive parents applicants:

(a) Who are capable of providing for the child's care, support, education, and character development; and

(b) Who have the ability to understand and accept the child's characteristics, potential, and limitations.

(2) Adoptive placement of a child shall not be made prior to the approval of a home as an adoptive home.

(3) The agency shall complete a written study of the adoptive home which shall include the following:

(a) A minimum of one (1) home visit by the adoption worker;

(b) Face-to-face [~~Personal~~] interviews, both joint and separate, shall be conducted with each member of the household.

(b) Worker's evaluation of the home situation.

(c) The functioning of the total household shall be considered in determining the suitability of the home.

(d) Three (3) written references indicating the suitability of the home and of the potential adoptive parents.

(4) The written study of the home of the applicant documents:

(a) Attitudes of household members toward placement of an adoptive child into the home.

(b) Observations of the functioning of the potential adoptive family including interpersonal relationships and patterns of interaction.

(c) The nonfamilial relationships.

(d) Certification by a licensed physician regarding the physical and mental ability of the family to provide necessary care for the child.

(e) Standards of household safety, housekeeping, and cleanliness are acceptable.

(f) Water supply and sanitation compliance with all state and local health requirements.

(g) Suitability of in- and out-of-door play space according to the age and needs of the child.

(h) Accessibility of the home to community resources.

(i) A criminal records check on each adult residing in the household.

(j) Verification of all marriages and divorces of the potential adoptive parents.

(k) The economic circumstances of the potential adoptive parents are sufficient to meet the needs of the child.

(5) Agencies shall clearly define the qualifications they require of potential adoptive applicant.

Section 10. Adoption Placement Process. (1) A child shall not be placed for adoption until the parental rights of biological parents and alleged parents are terminated by a circuit court order in accordance with Kentucky Revised Statutes and the child's custody is placed with the agency for the purposes of adoption placing.

(2) Parents shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3) The authority granted to agencies licensed by the cabinet authorizing them to place a child for adoption shall not be used to facilitate adoptive placements planned by doctors, lawyers, clergymen, and others outside the agency. The agency shall comply with provisions of 905 KAR 1:010, Application for permission to place or receive a child.

(4) A developmental history of the adoptive child and social history of the biological parents shall be obtained. Information shall be obtained from direct study and observation of the child by the social worker, pediatrician, foster parents, and if indicated, by the nurse, psychologist and other consultants. To comply with KRS 199.520 and 199.572, child-placing agencies shall assist the biological parents in completing forms prescribed by Cabinet for Human Resources policy and procedure.

(a) The child's developmental history shall include as much of the following as is available:

1. Birth and health history;
2. Early development;
3. Characteristic ways of the child of responding to people and situations;
4. Deviations from the range of normal development;
5. The experiences of the child prior to the decision to place him for adoption;
6. Maternal attitudes during pregnancy and early infancy;
7. Continuity of parental care and affection;
8. Foster care placements; and
9. Separation experiences.

(b) Information that may affect the child's normal development shall be obtained from biological mother and father about their family background may include:

1. Name;
2. Age;
3. Nationality;
4. Education;
5. Religion;
6. Occupation; and
7. Information to determine whether there are any significant hereditary factors or pathology, including illnesses of the biological mother or father.

(c) Information shall be obtained from the mother, if possible:

1. To the identity of the biological father or legal father, if different from the biological father, for purposes of determination of the father's parental rights; and

2. Establishment of the possible hereditary endowments. If either biological parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the agency shall document information to the extent possible from existing case records.

(5) A medical examination shall be made by a licensed physician

to determine:

(a) The state of the child's health;

(b) Significant factors that may interfere with normal development; and

(c) The implications of any medical problems.

(6) Before placement of the child, conditions under which adoptive parents accept the child shall be agreed upon. This written agreement shall embody the following provisions:

(a) The adoptive parents shall comply with KRS 199.470 and agree to file an adoptive petition at a time agreeable to them and the agency.

(b) The adoptive parents agree to:

1. Permit supervision by the agency during the period of time after placement; and

2. Preceding the final judgment by the circuit court.

(c) The agency is responsible for providing the adoptive parents with:

1. Written information regarding the child's background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520.

(d) The adoptive parents and the agency shall agree that the child may be removed from the family at the request of either party before the filing of the adoptive petition.

(7) Preplacement meetings shall be arranged for the adoptive parents and any child one (1) month of age or older.

(8) If preparing the child for placement with the selected adoptive parents, the agency shall discuss with the child his readiness to accept this placement in accordance with the child's age and ability to understand.

(9) Siblings who have had a relationship with one another shall be placed together unless it is determined to be more beneficial for them to be placed in separate homes. Continued contact between siblings in separate homes shall be maintained if possible. If siblings have been separated in placements:

(a) The case record shall reflect a valid basis for the separation;

(b) The decision to separate siblings shall be made by the executive director of the agency.

Section 11. Supervision of Adoptive Homes. (1) The agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the worker with the child and the family including both adoptive parents if not a single parent adoption, one (1) of which shall be in the home before filing of the adoption petition.

(b) Awareness of changes in the adoptive family including health, education, and behavior.

(2) Upon request of the Cabinet for Human Resources, the agency shall provide information as required in KRS 199.510 which is necessary to report to the court to proceed with the adoption. Upon the request of the cabinet for filing with the appropriate circuit court, the agency placing the child shall:

(a) Prepare a confidential report to the court; and

(b) Forward the original and one (1) copy of this report and a copy of information required by KRS 199.520 and 199.572 to the Cabinet for Human Resources.

(3) If the court finds the adoptive parents to be unsuitable and refuses to grant a judgment, the agency shall remove the child from the home.

Section 12. Maintenance of Adoptive Case Record. (1) The agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of agency service on:

(a) Each child accepted for care;

(b) His family; and

(c) Each adoptive applicant.

(2) The case record shall contain material on which the agency decision may be based and shall:

(a) Include information and documents needed by the courts;

(b) Preserve information about the child and his family;

(c) Include a narrative or summary of the services provided with copies of all legal and other pertinent documents; and

(d) Include all information gathered during the intake study including the following:

1. A description of facts about the child's family situation which necessitated placement of the child away from his family or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required study of the adoptive home;

6. Date of placement in the adoptive home;

7. A statement of the basis of the selection of this home for the child;

8. A record of after-placement services with dates of contacts and observations;

9. Dates of filing of petition and granting of judgments and other significant court proceedings relative to the adoption; and

10. Child's adoptive name.

(3) If there is need to share background information with one of the parties to a completed adoption or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the agency shall comply with KRS 199.570.

(4) Records on adoption which contain pertinent information shall be maintained indefinitely following final placement of a child. Each individual record shall be sealed and secured from unauthorized scrutiny.

MASTEN CHILDERS II, Secretary
PEGGY WALLACE, Commissioner

APPROVED BY AGENCY: July 12, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1994, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 17, 1994: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected 24 licensed private child-placing facilities providing foster care and adoption services to children.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulations only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

1. First year: There are no direct or indirect first year costs to the affected entities as the proposed regulations only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

2. Continuing costs or savings: There are no continuing direct or indirect costs to the affected entities as the proposed regulations only implement provisions of HB 191 relating to independent adoption

processing by adoption workers in licensed child-placing agencies.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements unless adoption workers are contracted with by prospective adoptive parents to complete the family and home background section of the placement investigation.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

1. First year: There will not be any first year direct or indirect cost or savings to the Department for Social Services as the proposed regulations only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

2. Continuing costs or savings: There will not be any continuing direct or indirect cost or savings to the department as the proposed regulations only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements except that the promulgating agency will allow that independent adoptive applicants, who reside in Kentucky, may elect to contract with a licensed child-placing agency in Kentucky for the completion of the Independent Adoptive Placement Investigation Report for review and processing with the Interstate Compact on the Placement of Children, if applicable, and the secretary's placement decision. Also the department standardized the required information to be submitted on specific forms that should expedite the submission process.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed amendments only implement provisions of HB 191 relating to independent adoption processing by adoption workers in licensed child-placing agencies.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This administrative regulation was not tiered as it applies to all 24 licensed private child-placing facilities providing foster care and adoption services to children statewide.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 1:330. Child protective services.

RELATES TO: KRS 600.10, 605.130, 620.010 to 620.050, 620.990, 1994 Ky. Acts ch. 207, 217

STATUTORY AUTHORITY: KRS 194.050, 605.150, 620.180

NECESSITY AND FUNCTION: KRS 194.050 requires the Secretary for the Cabinet for Human Resources to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. This administrative regulation sets forth the procedures for child protection investigations of abuse, neglect, or dependency by the Department for Social Services in compliance with KRS 605.150 and 620.180.

Section 1. Definitions. (1) "Child protective services" means preventive and corrective services directed toward:

(a) Strengthening family life;

(b) Improving the abilities of parents to carry out parental responsibilities;

(c) Assuring for each child a safe and nurturing home;

(d) Safeguarding the rights and welfare of abused, neglected or dependent children;

(e) Assisting parents or other persons responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of a child; and

(f) Identifying and correcting conditions in society which contribute to the neglect, abuse or dependency of a child.

(2) "Failure to locate" means the identifying information about the family is insufficient for locating them or the family has moved and their new location is not known.

(3) "Found and substantiated" means a type of physical abuse, sexual abuse, neglect or dependency not originally reported by the referral source was found and substantiated during the investigation;

(4) "Prior involvement" means:

(a) Either the child or caretaker are currently registered DSS clients or have been registered clients within one (1) year of the reported fatality; or

(b) A protective service investigation was completed in regard to the child or caretaker, regardless of the status of the investigation, within one (1) calendar year preceding the reported fatality.

(5) "Some indication" means some indicators that abuse, neglect or dependency may exist or some circumstances or conditions are sufficient to arouse suspicion;

(6) "Substantiated" means an admission of abuse, neglect or dependency by the persons responsible or a judicial determination of abuse, neglect or dependency or strong circumstantial or other supportive indicators that abuse, neglect, or dependency by the persons responsible exist;

(7) "Unsubstantiated" means there is no evidence, indicators or justification for suspicion of abuse, neglect or dependency.

Section 2. Receiving a Report. (1) The Department for Social Services shall accept reports of child abuse, neglect or dependency as governed by KRS 620.030.

(a) The home telephone numbers of family services workers, family services office supervisors, and the child abuse hotline shall be made available to agencies in the community who may encounter child abuse, neglect or dependency for emergency reports after normal office hours unless a formalized on call system exists.

(b) The intake worker shall attempt to elicit from the person reporting the suspected abuse, neglect or dependency as much information about the child's circumstances, as possible, including:

1. Specific information as to the nature and extent of abuse or neglect;

2. The causes of the abuse;

3. The location of the child and family;

4. Determine if there have been previous incidents;

5. Witnesses to the incident which caused the child's conditions;

6. Whether the reporting person or others have taken any action;

7. Present danger to child or staff; and

8. The reporting persons identity and relationship to the child assuring him that his identity shall not be revealed unless the court orders his name divulged.

(c) Anonymous reports which give sufficient information and report abuse, neglect or dependency by a caretaker shall be investigated.

(2) Acceptance criteria.

(a) The department shall receive and investigate reports of physical abuse if there are reported to be or have been observable marks on a child which were allegedly inflicted nonaccidentally by a caretaker. The department may accept a report of physical abuse or risk of physical injury if no observable marks are seen and if:

1. There are reports of a child being hit in critical areas of the body, including but not limited to, the head, face, neck, genitals, abdomen, and kidney areas;

2. There are reports of threats of physical injury; or

3. There are allegations of injuries to a child which are the result of altercations between the child and the custodian. The worker shall explore the precipitating factors, the degree of appropriateness of force used by the caretaker and the need for further services to assist in eliminating the violent behavior in the home.

(b) The department shall receive and investigate reports which allege neglect of a child by a caretaker which may result in harm to the physical health and safety of the child in the following areas:

1. Hygiene neglect exists if:

a. A child has physical symptoms that require treatment due to poor care; or

b. The child's physical health and safety is negatively affected due to an act or omission by the caretaker;

2. Supervision neglect exists if the caller has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;

3. Food neglect exists if a child shows symptoms of:

a. Malnutrition;

b. Dehydration;

c. Food poisoning; or

d. Not having been provided adequate food for a period of time that interferes with the health needs of the child based on age and other conditions;

4. Clothing neglect exists if a child suffers:

a. Illness;

b. Exposure; or

c. Frostbite due to inadequate clothing or the clothing is insufficient to protect the child from the elements.

5. Environmental neglect exists if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;

6. Educational neglect exists if the school system has exhausted their resources to correct the problem and the caretaker's negligence prevents the child from attending school or receiving appropriate education; and

7. Medical neglect exists if a child is not receiving medical assessment or treatment for an injury or illness or disability which if left untreated may:

a. Be life-threatening;

b. Result in permanent impairment;

c. Interfere with normal functioning and worsen without treatment; or

d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease.

(c) The department shall receive and investigate reports which allege sexual abuse of a child committed or allowed to be committed by a caretaker or the risk that an act of sexual abuse, sexual exploitation, or prostitution shall be committed on a child. Reports of sexual abuse shall include contacts and interactions in which a child is used to sexually stimulate or gratify another person. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease and the child exhibits physical or behavioral indicators of abuse.

(d) The department may receive and investigate reports which allege risk of sexual harm to a child, if there are factors which cause a person to believe that an act of sexual abuse may be committed on a child.

(e) The department shall receive and investigate reports which allege emotional injury or risk of emotional injury of a child by a caretaker as governed by KRS 600.020(20).

(f) The department shall receive and investigate reports which allege a child is dependent as governed by KRS 600.020(15).

Section 3. The cabinet shall not investigate reports of abuse or neglect by a noncaretaker but shall comply with KRS 620.030(1).

(1) Staff shall keep a log of these referrals specifying the date received and date referred to the Commonwealth's or county attorney and local law enforcement.

(2) Staff may at the request of local law enforcement provide assistance in interviewing alleged child abuse victims.

(3) Staff may refer to other agencies referrals not requiring mandatory child protection services investigations.

(4) The following criteria shall be used in identifying referrals not requiring investigation:

(a) The victim of the report is age eighteen (18) or over;

(b) There is insufficient information to locate the child or explore leads to locate;

(c) The problem described does not meet the statutory definitions of abuse, neglect or dependency;

(d) Reporter notifies the department that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;

(e) If the report concerns custody changes or custody related issues or lifestyles issues without allegations of abuse, neglect or dependency;

(f) Corporal punishment appropriate to the age of the child without injuries, marks or bruises or substantiated risk of harm. This type of corporal punishment by foster parents shall be reported;

(g) Allegations of abuse or neglect of a fetus;

(h) Allegations of spouse abuse to a married youth, under age eighteen (18). These reports shall be forwarded to the adult services worker.

(i) If the report concerns a specific incident previously investigated and no new information or change in the child's circumstances is communicated.

Section 4. Report of Suspected Child Abuse, Neglect, Dependency. Following the receipt of the report, the DSS-115, Report of Suspected Child Abuse, Neglect, Dependency, herein incorporated by reference, shall be completed and the report investigated. Investigations shall be conducted according to the following time frames as governed by KRS 620.040(1):

(1) If the report indicates the child is in imminent danger, the investigation shall be initiated within the hour.

(2) If the report indicates nonimminent danger of physical or sexual contact, effort shall be made to have personal contact with the child and family within twenty-four (24) hours, but contact shall be made within forty-eight (48) hours. Unsuccessful attempts to locate

shall be documented in the investigative narrative.

(3) If the report indicates nonimminent danger, not involving physical or sexual contact, the investigation shall be initiated within twenty-four (24) hours. Efforts shall be made to have personal contact with the child and family within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(4) Reports of dependency if a child is not in imminent danger shall be investigated within forty-eight (48) hours.

Section 5. Reports of Abuse, Neglect, and Dependency. (1) If a report of alleged child abuse, neglect or dependency in an approved foster home or adoptive home is received, the supervisor shall immediately contact the family services district manager who shall designate a worker to conduct the investigation. If abuse or neglect or dependency is substantiated or there is some indication, a review of the home shall be completed. The decision to close or continue using the home shall be made by the family services district manager based on pertinent available information.

(2) If a report of alleged child abuse or neglect in a licensed child care facility, private child care or a day care center is received the worker shall notify the Division of Licensing and Regulation. This notification shall be documented in the case and may be done by phone and followed up in writing. If possible, the investigation shall be coordinated and conducted jointly; however, if not possible within the designated time frame, the worker shall proceed with the investigation. In joint investigations the DSS worker shall with the Division of Licensing and Regulation staff:

(a) Conduct an entrance interview with the facility administrator or designee outlining the nature of the report without disclosing the name of the reporter; and

(b) Discuss their findings privately prior to conducting an exit interview.

(3) If a report of alleged child abuse or neglect in a Cabinet for Human Resources operated treatment facility is received the worker shall immediately telephone the Office of Inspector General who shall investigate the report. The phone contact shall be followed by completing a DSS-115 and further action shall not be taken unless specifically requested by the Office of Inspector General.

(4) Reports of abuse or neglect involving school personnel.

(a) If allegations of child abuse or neglect have been made about a school employee, with the incident occurring during school time or other school related activities, the worker shall:

1. Complete the DSS-115 and forward copies to appropriate law enforcement and county or commonwealth attorney;

2. Interview child and natural parents or legal guardians. Conduct the interview away from school grounds, if possible;

3. Interview the alleged perpetrator away from the school grounds if possible.

(b) If the referral is unsubstantiated, further action shall not be taken. Information regarding the finding of the report may be shared with the alleged perpetrator and the custodial parent. Other information shall be requested through open records procedures.

(c) If the referral is substantiated or shows some indication of abuse or neglect: the worker shall notify the appropriate supervisor of the alleged perpetrator that an investigation has been conducted and of the results of the investigation.

(5) If a report of alleged child abuse or neglect in a certified family child care home is received the worker shall notify the Department's Child Care Services Branch.

Section 6. Prior Reports. Before investigating the referral regarding a child unknown to the local office, the district data center shall be contacted to determine the existence of prior reports or if there exists a closed case or case opened elsewhere in the state. This information shall be documented in the case record but failure to secure this information shall not delay the investigation within the stated time frames.

Section 7. Initial Investigation. Information necessary for determining the validity of the report, and if valid, the existence of imminent danger and risk to the child shall be obtained during the investigation. Investigations shall entail face-to-face contact with the alleged victim. Victims, if of appropriate age, and if possible, parents or caretakers, appropriate household and family members, and alleged perpetrators shall be interviewed.

(1) If determining whether to interview the child, or parent or caretaker first, consideration shall be given to the:

(a) Nature of the referral;

(b) Current location of the child;

(c) Indicated risk to the child; and

(d) Known violence on the part of the parent.

(2) A child shall not be interviewed in the presence of alleged perpetrators or others who may put pressure on the child.

(3) If the worker is unable to contact the parents or caretaker, he shall notify the supervisor and document the case record.

(4) Collateral contacts shall be interviewed if the validity or severity of the report cannot be determined from the interviews. Collateral sources may include:

(a) Officers of the court;

(b) School personnel;

(c) Neighbors;

(d) Medical personnel;

(e) Law enforcement officers; and

(f) Personnel of other agencies.

(5) Medical and psychological examinations may be required if the report alleges that the child has suffered sufficient physical harm of a serious nature, emotional harm or emotional injury. The worker, if possible, shall obtain a copy of the report.

(6) The worker shall cooperate with law enforcement.

(a) Child sexual abuse investigations shall be investigated jointly with law enforcement. The investigation shall be initiated within time frames established in Section 4 of this administrative regulation.

(b) Attempts shall be made to ensure that the worker shall not impede the criminal investigation; however, the worker's primary responsibility shall be the protection of the child.

(7) To prevent a child from experiencing multiple interviews a videotaped interview may be appropriate.

Section 8. Alleged Perpetrators Age Twelve (12) or Older. Reports involving perpetrators in a caretaking role under the age of twelve (12), shall be investigated. However, the child shall not be identified as the alleged perpetrator on the DSS-150, Initial Results of Child Abuse, Neglect, Dependency Investigation, herein incorporated by reference.

Section 9. Interviewing Children in Schools. Worker's shall have the authority to investigate child abuse, neglect or dependency reports at school without parental consent. The worker shall inform appropriate school personnel of the need to interview a child regarding a referral. Details of the allegation and investigation shall only be given to school personnel with a legitimate interest in the case.

Section 10. Notice of Results of Investigation. The worker shall complete the notification section of the DSS-115, and forwarded to law enforcement and the county or commonwealth attorney within seventy-two (72) [~~forty-eight (48)~~] hours of receipt of the report, exclusive of weekends and holidays as governed by KRS 620.040(1).

Section 11. Medical Neglect of Disabled Infants. (1) The department shall be notified of known or suspected instances of the withholding of medically indicated treatment of disabled infants with life threatening conditions in hospitals or health care facilities. Federally funded hospitals and health care facilities shall be given the department's toll-free child abuse hotline number.

(2) If a report is received, hotline staff shall notify a child protective services specialist in central office if received during working hours or a designated person at home if received outside working hours.

(3) Central office staff shall contact one (1) of the department's medical consultants who shall investigate the report.

Section 12. Denied Entry to a Home for a Protective Service Investigation. (1) The worker shall not enter a home during the investigation of a report if an adult is not present in the home. If there is reason to believe the child is in imminent danger, law enforcement shall be contacted for assistance.

(2) If the parents or caretakers of a child refuse the worker entry to the child's home or refuse to allow the child to be interviewed, the worker with approval of the supervisor may request an order from the court.

(a) If the court issues a search warrant the worker may accompany law enforcement officers if the warrant is served.

(b) With the exception of removal of a committed child, the worker shall not remove a child from the home without a court order to remove;

(c) If the court refuses to issue a search warrant, the family service worker shall document the attempts to secure one in the narrative.

Section 13. Risk Assessment. During an investigation of alleged child abuse and neglect, the worker shall assess the strengths of the family and risk to the child by completing the DSS-897, Child Protective Services Risk Assessment Guidelines, herein incorporated by reference. The worker shall not be required to complete the DSS-897 if the:

(1) Child is found dependent;

(2) Alleged perpetrator is not the child's primary caretaker;

(3) Investigation determines the referral to be unsubstantiated or unable to locate;

(4) Investigation of a child fatality determines there are no surviving children in the home; or

(5) The supervisor deems the use of the DSS 897 to be unnecessary, based on the training and experience of the worker, or inappropriate; and the reasons are documented in the case record.

Section 14. Child Fatality Investigations. (1) Reports that a child fatality has occurred due to abuse or neglect by a parent, guardian or other person exercising custodial control or supervision of the child shall be investigated by the department.

(2) If the alleged perpetrator was not a parent or in a caretaker role, the reports shall be forwarded as governed by KRS 620.030.

(3) If it is determined that the department has prior involvement, the commissioner, the Office of Communications and the general counsel of the cabinet shall be notified of the situation immediately through the established channels of communication. The notification shall include:

(a) Name and age of victim;

(b) Known circumstances around the death;

(c) Description of physical injuries or medical condition of the child;

(d) Names, ages and location of other children in the family;

(e) Brief description of the department's history with the family caretaker;

(f) Actions taken by the department to date and future actions to be taken; and

(g) Involvement of other professionals in the case.

(4) It may be advisable that staff who have had prior direct involvement with the case not be assigned to conduct the investigation.

(a) The assigned investigator, if feasible, shall consult with social workers who have direct involvement with the case prior to investigating.

(b) A joint investigation with law enforcement shall be conducted if possible. The designated investigator shall be cooperative, but not usurp the roles of law enforcement or the coroner or interfere with their respective investigations. The investigator shall contact appropriate law enforcement and coroner to clarify roles and establish a common channel of communication, particularly if the intake information indicates other children are present in the household.

(c) Worker safety in a potentially dangerous setting shall be considered during the course of the investigation. Collateral contacts with medical personnel, the coroner and other appropriate persons may be made to assess potential danger to staff.

(5) The worker shall determine the safety of any surviving children through immediate assessment to assure their safety. The risk assessment guidelines shall be completed if there are surviving children in the home, unless the family services office supervisor deems the use of the risk assessment guidelines inappropriate and the reason is documented in the case record. This assessment includes:

(a) Arranging for physical examinations to check for injuries to the surviving children, if indicated;

(b) Determining whether there has been any history of prior abuse, neglect to the children or other family members by the alleged perpetrator;

(c) Interviewing the children to assess present emotional condition and to determine to what extent they may have witnessed family violence;

(d) Interviewing the parent or caretaker to observe interaction with children and to discuss parent or family history of the caretaker;

(e) Making collateral contacts with neighbors, schools and extended family;

(f) Determining whether the surviving children were present during the time the deceased child received injuries and witnessed what occurred; and

(g) Initiating mental health counseling immediately, if appropriate, for the emotional stability of the children;

(6) If parental rights have been terminated and there has been ongoing contact or other special circumstances, the decision to notify biological parents shall be made by the manager or designee. The Department of Public Advocacy, Protection and Advocacy Division, shall be notified if a child, identified as a protection and advocacy client, dies as a result of abuse or neglect and the perpetrator is in a caretaker role.

(7) In the case of the death of a youthful offender, the sentencing circuit court and the Parole Board shall be notified.

(8) If a fatality occurs in either a foster home, Cabinet for Human Resources facility, psychiatric unit or hospital or private child care facility, and parental rights are intact, efforts shall be made to immediately notify the parents. The judge of the committing court and the guardian ad litem for the deceased child shall be informed of the fatality in writing within three (3) working days after receipt of the report.

(9) The following procedures apply to staff in a Cabinet for Human Resources facility if a death occurs:

(a) Emergency medical services and police shall be contacted immediately. Location and phone number shall be posted by the telephone in each program;

(b) The program director, branch manager, and division director through normal chain of command are to be notified immediately. The division director shall notify the Commissioner for Social Services;

(c) Staff on duty shall not disturb the body or the immediate area beyond any action necessary to provide emergency resuscitation techniques, or to check for vital signs;

(d) Notification shall be given to the local office of the coroner in compliance with KRS 72.020;

(e) Notification to the family and community worker shall be delivered, after direction by the program director, who shall select the

individual to present the information in a therapeutic manner to the person;

(f) Detailed documentation shall be entered in the case record by staff describing the event, including:

1. The time the coroner was notified;
2. The time pronouncement of death was given;
3. Names of staff involved; and
4. Notification of parents and guardians. Pertinent notifications and significant facts related to the death shall be fully documented.

(g) A final report shall be prepared by the program director to be submitted to the Commissioner for Social Services through established channels.

(h) The record of the juvenile shall be maintained at the facility until a final report of the coroner is entered into the record. A copy of this report shall be sent to the Commissioner for Social Services through established channels.

(10) Funeral arrangements shall remain the responsibility of the natural parents unless parental rights have been terminated.

(a) Staff shall explore with the natural parents their ability to accept financial responsibility for the funeral. Personal and family resources, including trust fund and insurance in the name of the child, shall be exhausted prior to approval of department funds for funeral and burial expenses. Costs shall have prior approval by the appropriate level of supervision.

(b) The selection of a funeral home, mortician, casket, and burial lot shall be based on estimates of cost which are reasonable and on consideration of the choice of the natural parents.

(c) Clothing for burial may be provided by the natural family, foster family, or may be purchased by the department staff.

(d) Flowers may be selected by the department staff and billed to the department.

(e) Arrangements for religious services may be made with a clergyman of the faith of the natural parents. If the faith of the natural parents is unknown, a clergyman of the faith of the foster parents may conduct services.

Section 15. Determining the Validity of the Report. After the interviews and the necessary information is gathered, the social worker shall determine the validity of the report and submit the DSS-150, within thirty (30) working days of the receipt of the report from the reporting person, unless there are extenuating circumstances which are documented in the narrative. The family services office supervisor or designee shall review, sign and date the original DSS-150.

Section 16. Central Registry. (1) Reports of alleged abuse, neglect, or dependency are computerized for the purposes of compiling statistical information, aiding in diagnostic treatment, and providing management with a means for program evaluation.

(2) Reports that are found to be unsubstantiated or unable to locate shall include:

(a) Child demographics;
(b) The type of report alleged;
(c) Source of report; and
(d) Status of case.

(3) Reports that are found to be substantiated, and some indication shall include:

(a) Both child and alleged perpetrator demographics;
(b) Specific characteristics relating to the report;
(c) Type of report; and
(d) Status and relationship of alleged perpetrator to child involved.

(4) The only information that shall be released from the child abuse, neglect, or dependency central registry is statistical information. Social agencies demonstrating a legitimate interest may be told if a case exists in the registry, but all requests for details related to that case shall go through open records process.

Section 17. Photographs. Photographs may be taken of a child during a protective service investigation without parental consent. If it appears that photographs of abused or neglected children are necessary for proof of abuse or neglect, it is advised that law enforcement take the photographs. If a family services worker takes the photographs, there shall be a witness and documentation made of the subject, date, and witnesses to the photograph.

Section 18. Case Planning. (1) If a case is to be opened, a maximum of fifteen (15) working days shall be allowed to open the case and complete the case plan.

(a) Priority for opening cases shall be given to cases in which the child is at greatest risk for harm.

(b) Within ten (10) working days of the decision to open a case, the family services office supervisor shall assign or transfer the case for treatment.

(2) The case plan shall be based on assessment and goal formation. It shall include a limited number of attainable, specific objectives agreed upon between the social worker and the family. The case plan shall take into account the following:

(a) The assets and strengths of the family unit and its members;
(b) The options, priorities and needs of the family unit and its members;
(c) The clarification and definition in behavior-specific terms of what needs to change and what new skills need to be learned;
(d) The identification and impact of community forces over which the family may have little or no control;
(e) The opinions of expert consultants regarding medical, mental health, legal and other factors;
(f) The input from referring agencies; and
(g) The resources available within the agency and the community and delineation of roles and functions to bring about the specified changes.

(3) The social worker shall develop a treatment plan designed to provide a safe environment for the child and engage the commitment and cooperation of the family. Family members and children of appropriate age shall be encouraged to participate in the development and updating of case plans.

(4) A copy of the case plan shall be given to the parent or caretaker. The case plan shall be reviewed by the family, worker and supervisor, to include case closure assessment no less frequently than every six (6) months.

(5) A DSS-154, Request for Hearing, shall be given to the family advising them of the right to a fair hearing in compliance with 905 KAR 1:320.

(6) If termination of parental rights becomes the goal, case planning and service delivery shall continue until the judgment order is received.

Section 19. Service Delivery. Service delivery shall be provided as outlined and stated in the case plan. Service delivery shall encompass identified expectations of the family, staff and the implementation of resources in the community. Service recordings shall be completed within thirty (30) days of the contact and shall reflect progress toward treatment goals. Recordings shall be signed and dated by the worker.

Section 20. Case Closure. (1) The decision to close a case which has received services shall be based on evidence that the original factors resulting in the abuse, neglect or dependency have been resolved to the extent that the family can protect the child and can, at least minimally, meet the needs of the child. A child protective services case shall not be closed if withdrawal of services places the child in danger. Consideration for closure of a child protective service case may occur if the following conditions are met:

(a) The child is no longer in need of protection;
(b) The goals have been achieved; or

(c) The client is not making progress toward treatment goals and there are no legal grounds for intervention.

(2) The closing summary of the child protective services case shall be included in the case record. A brief narrative regarding the case and the reasons for closure shall be entered. The summary may include:

(a) Number of months of child protective services;

(b) Agencies still involved in the case;

(c) Assessment of family functioning and of conditions that have changed to make closure possible;

(d) Reason and date of closure.

(3) The form shall be signed and dated by the worker. Notification to client of closure with a 154-A shall be documented in the case as required by 905 KAR 1:320.

Section 21. Material Incorporated by Reference. (1) The DSS-115, Suspected Abuse, Neglect, Dependency or Exploitation Reporting Form, revised July, 1994 [~~May, 1993, the DSS-116, Notification of Initial Results of Child Abuse Investigations, became obsolete May, 1993, the DSS-150, Initial Child Abuse, Neglect or Dependency Investigation, revised December, 1991, and the DSS-897, Child Protective Services Risk Assessment Guidelines, revised January, 1993~~] shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MASTEN CHILDERS II, Secretary
PEGGY WALLACE, Commissioner
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1994, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 17, 1994: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are those 57,706 children and their families served by the Department for Social Services as a result of 36,901 reports of abuse, neglect or dependency received during fiscal year 1993.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulations were revised to comply with HB 223 and HB 479 enacted by the 1994 General Assembly, which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations.

1. First Year: There are no direct or indirect first year costs to the affected entities as the proposed regulations were revised to comply with HB 223 and HB 479 enacted by the 1994 General Assembly, which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations.

2. Continuing costs or savings: There are no continuing direct or indirect costs to the affected entities as the proposed regulations were revised to comply with HB 223 and HB 479 enacted by the 1994 General Assembly, which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations were revised to comply with HB 223 and HB 479 enacted by the 1994 General Assembly, which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will be only a minor fiscal impact as the proposed amendments implement HB 223 and HB 479 which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations. Since the department already attempted to coordinate investigations of child sexual abuse with law enforcement there is only a minor increase in costs associated with implementation of HB 223. The implementation of HB 479 may result in a slight savings as the notification of abuse and neglect to law enforcement and the County or Commonwealth Attorneys is not necessary if they are the source of the initial report. Additionally the extended time frames from 48 to 72 hours may eliminate a redundant second notification and provide for a more efficient use of staff time.

(a) Direct and indirect costs or savings: There will be only a minor fiscal impact as the proposed amendments implement HB 223 and HB 479 which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations. Since the Department already attempted to coordinate investigations of child sexual abuse with law enforcement there is only a minor increase in costs associated with implementation of HB 223. The implementation of HB 479 may result in a slight savings as the notification of abuse and neglect to law enforcement and the County or Commonwealth Attorneys is not necessary if they are the source of the initial report. Additionally the extended time frames from 48 to 72 hours may eliminate a redundant second notification and provide for a more efficient use of staff time.

1. First Year: There will be only a minor fiscal impact as the proposed amendments implement HB 223 and HB 479 which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations. Since the department already attempted to coordinate investigations of child sexual abuse with law enforcement there is only a minor increase in costs associated with implementation of HB 223. The implementation of HB 479 may result in a slight savings as the notification of abuse and neglect to law enforcement and the County or Commonwealth Attorneys is not necessary if they are the source of the initial report. Additionally the extended time frames from 48 to 72 hours may eliminate a redundant second notification and provide for a more efficient use of staff time.

2. Continuing costs or savings: There will be only a minor fiscal impact as the proposed amendments implement HB 223 and HB 479 which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations. Since the department already attempted to coordinate investigations of child sexual abuse with law enforcement there is only a minor increase in

costs associated with implementation of HB 223. The implementation of HB 479 may result in a slight savings as the notification of abuse and neglect to law enforcement and the County or Commonwealth Attorneys is not necessary if they are the source of the initial report. Additionally the extended time frames from 48 to 72 hours may eliminate a redundant second notification and provide for a more efficient use of staff time.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements although some revised provisions may expedite the investigation process.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed amendments were revised to comply with HB 223 and HB 479 enacted by the 1994 General Assembly, which required joint investigations with law enforcement on child sexual abuse cases and revised the time frames for notification to law enforcement and County and Commonwealth Attorneys from 48 to 72 hours for results of initial child abuse or neglect investigations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(6) Any additional information or comments: There are additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This administrative regulation was not tiered as it applies to offices of the Department for Social Services and children families receiving child protective services statewide.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 3:040. Allocation formula.

RELATES TO: KRS 273.446

STATUTORY AUTHORITY: KRS 194.050, 273.446(2)

NECESSITY AND FUNCTION: This administrative regulation establishes the formula for allocation of community service block grant (CSBG) funds to applicant agencies as required by KRS 273.446(2).

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Human Resources.

(2) "Service area" as used in this administrative regulation means the land lying within the geographic boundary of the community action agency submitting an application.

Section 2. The formula for allocation of community service block grant funds for federal fiscal year 1995 [~~1984~~] and subsequent years received by the cabinet shall be based upon the following:

(1) The CSBG allocation received by each community action agency for federal fiscal year 1994 shall become the base allocation amount for subsequent years distribution.

(2) Funds received by the cabinet which exceed the base allocation shall be distributed to each community action agency based on the most current and available poverty census data.

(3) If the funds received by the cabinet are less than the federal fiscal year 1994 base allocation, the reduction shall be made on a pro rata basis based upon each community action agency's federal fiscal year 1994 base allocation.

[~~(1) Twenty-five (25) percent of funds shall be based upon the 1981 federal fiscal year federal community services administration grantee base allocation received by the applicant.~~

~~(2) The remaining seventy-five (75) percent of funds to be distributed shall be based upon the incidence and severity of poverty, as determined by the cabinet to exist within the service area of the applicant agency.~~]

MASTEN CHILDERS II, Secretary

PEGGY WALLACE, Commissioner

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1994, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 17, 1994: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(I) Type and number of entities affected: The type and number of entities affected are the 23 federally funded community action agencies who receive Community Service Block Grant funds.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulations only revise the allocation method to incorporate the new 1990 federal poverty census data.

1. First Year: There are no direct or indirect first year costs to the affected entities as the proposed regulations only revise the allocation method to incorporate the new 1990 federal poverty census data.

2. Continuing costs or savings: There are no continuing direct or indirect costs to the affected entities as the proposed regulations only revise the allocation method to incorporate the new 1990 federal poverty census data.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only revise the allocation method to incorporate the new 1990 federal poverty census data.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only revise the allocation method to incorporate the new 1990 federal poverty census data.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only revise the allocation method to incorporate the new 1990 federal poverty census data.

1. First Year: There will not be any first year direct or indirect cost or savings to the Department for Social Services as the proposed regulations only revise the allocation method to incorporate the new 1990 federal poverty census data.

2. Continuing costs or savings: There will not be any continuing direct or indirect cost or savings to the Department for Social Services as the proposed regulations only revise the allocation method to

incorporate the new 1990 federal poverty census data.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: There will not any change in the Department for Social Services reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because the proposed amendments only revise the allocation method to incorporate the new 1990 federal poverty census data.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(6) Any additional information or comments: All of the twenty-three community action agencies have agreed with the proposed allocation revision and allocation method. There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This administrative regulation was not tiered as it applies to the 23 federally funded community action agencies that receive allocations from the Community Services Block Grant funds.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 5:070. Adult protective services.

RELATES TO: KRS Chapters 202A, 202B, 209.010 to 209.160, 403.715 to 403.785

STATUTORY AUTHORITY: KRS 194.050, 209.030(1)

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt regulations necessary to operate the programs and fulfill the responsibilities vested in the Cabinet for Human Resources. In compliance with KRS 209.030(1) the Department for Social Services has drafted procedures that shall enable provisions of KRS 209.010 to 209.160, concerning the protection of adults who may be suffering from or at risk of abuse, neglect or exploitation, to be implemented.

Section 1. Central Office Register. (1) A statewide central register of adult abuse, neglect, exploitation and spouse abuse reports shall be maintained by the cabinet.

(2) This information shall be obtained from the DSS-292, Adult Protective Services Investigation, herein incorporated by reference. The purpose of this register shall be to:

(a) Gather and correlate data on incidence and characteristics of adult abuse, neglect, exploitation and spouse abuse;

(b) Correlate and cross reference adult and child protection reports;

(c) Identify previous reports on an alleged victim;

(d) Serve as a resource for defining problem areas in adult protective services and identify training needs; and

(e) Serve as a source of information in the development of policy, planning and budgeting; and

(f) Identify a previous report on an alleged perpetrator requesting a certificate, license, registration or permit to operate a human services center as defined in 905 KAR 2:001.

Section 2. Receiving the Report. (1) When receiving a report of suspected adult abuse, neglect, exploitation or spouse abuse the worker shall make every effort to obtain the information to comply with KRS 209.030(3) and other information that may assist in determining if the adult may be in a state of emergency and in immediate need of protective services. It may be necessary for the worker to:

(a) Advise the reporting source that additional information is necessary to conduct an investigation if he refuses or is unable to give sufficient information to locate or identify the adult;

(b) Contact other agencies or individuals for the purpose of securing additional information which may be relevant in conducting the investigation.

(2) When the report is received and required information secured, the worker shall prepare a written intake report (DSS-115, see child protective services, 905 KAR 1:330) concerning the adult alleged to be abused, neglected or exploited and submit it to the family services office supervisor or designee, for assignment [~~who shall assign the written intake report to staff~~] for investigation. A copy of the DSS-115 shall be sent to the appropriate law enforcement agency in compliance with KRS 209.030(4) unless they are the reporting source.

Section 3. Adult Protective Service Investigations. (1) The Department for Social Services or its designee shall conduct an investigation of a report of alleged abuse, neglect or exploitation of an adult and provide protective services, upon request. The investigation shall include contact with the alleged victim and may include contact with the alleged perpetrator and collaterals. [~~The purpose of conducting an investigation shall be to:~~

~~(a) Determine through personal contact if an adult has been abused, neglected or exploited;~~

~~(b) Assess the need for protective services;~~

~~(c) Provide protective services, upon request;~~

~~(d) Initiate court action in the circuit or district court if the client needs emergency protective services but lacks the capacity to consent or refuse service; and~~

~~(e) Ascertain if there are other alleged victims of abuse, neglect or exploitation in the household or facility and report the allegation in compliance with KRS 209.030 and 620.030.~~]

(2) Provisions of KRS 209.140 shall take precedence over general confidentiality statutes and are limited to protective services investigations. [~~Confidentiality in investigations shall comply with KRS 209.140.~~]

(a) Requests for written information, except for court ordered releases, shall be handled through the open records process. Court orders for records may be responded to at the local office unless the worker has reason to question or contest the order. Requests for open records made by someone other than those listed in KRS 209.140 shall be accompanied with a release of information from the alleged victim or the alleged perpetrator.

(b) Prior to releasing verbal information, the worker shall determine the legitimacy of the individual or agency's interest in the case. If staff are in contact with persons who shall not have legal access to the records, the only information which may be shared is that which is deemed necessary to carry out their statutory responsibility to protect the client and complete the investigation. If the reporting source or other interested parties permitted by statute request follow up information, the worker may:

1. Provide information of a general nature as to whether the investigation is complete;

2. Offer an explanation as to the type of services the department may offer in these situations; and

3. Explain the department's policy as relates to the client's right

to accept or refuse services.

(3) Guidelines for conducting investigations.

(a) The investigations of a report of adult abuse, neglect, exploitation or spouse abuse shall be initiated by the assigned family services worker within:

1. One (1) hour of receipt if the reporting source claims that the adult is in a state of emergency which presents a substantial risk of death or immediate and serious physical harm to himself or others;

2. Twenty-four (24) hours of receipt if the information indicates the adult is not in a state of emergency.

(b) An adult protective services investigation shall include a personal interview with the alleged victim and may include face-to-face contact. In alternate care situations, the worker shall inform the administrator, operator or designee that an investigation is being conducted. The alleged victim and others shall be interviewed in private if possible. If the alleged victim has a guardian, an interview with the guardian to explain the worker's role as investigator is appropriate.

(c) Mental and physical health records necessary to complete the investigation shall be reviewed by the worker and copies obtained, if possible, to be included in the investigative report.

(d) Police records, mental inquest, disability, probate records and legal documents may be reviewed when appropriate to the conduct of the investigation.

(e) Financial records including savings and checking account statements, financial eligibility and assistance records, disability or retirement income records and property valuation records, may be reviewed by the worker in cases of financial exploitation of adults. A release of information may be used in accessing records. If the worker experiences difficulty, the office of the counsel may be consulted with supervisory approval.

(f) It may be appropriate to take photographs of the alleged victims injuries, but pictures shall not be taken by Department for Social Services staff if the alleged victim refuses permission.

(g) A written voluntary statement regarding the incident may be obtained if it is apparent that abuse or neglect has occurred and the alleged victim, witness, or perpetrator is willing. The persons providing the statement shall be advised that it may be shared with law enforcement officials and they may be required to testify in court.

(h) When conducting a spouse abuse investigation, the worker shall:

1. Attempt to arrange a face-to-face interview with the alleged victim to conduct the investigation and offer protective services. Efforts to contact the alleged victim shall be documented in the investigative report. If a spouse abuse report indicates that the alleged victim does not want to be contacted supervisory discretion shall be exercised in determining the appropriate plan of action based on the nature of the report.

2. Not disclose the location of a spouse abuse shelter[~~, if confidential~~].

3. Discuss the services of the area spouse abuse shelter with the alleged victim during the investigative interview. If the alleged victim requests assistance in securing shelter in the area spouse abuse shelter, the DSS worker shall assist in making the necessary arrangements.

(i) When conducting investigations involving a licensed health care facility [~~or complaints received on alternate intermediate services for mentally retarded and developmentally disabled programs~~], the worker shall contact, via telephone, the Division of Licensing and Regulation regional office to coordinate the investigation and shall send a DSS-284, Complaint Report, herein incorporated by reference.

(j) When DSS receives a report involving alleged abuse, neglect or exploitation in a CHR facility, the worker shall immediately contact, via phone, the Division of Licensing and Regulation regional office and report the incident. The phone call is followed by completing the DSS-284 and mailing the original to the Division of Licensing and Regulation. If the worker receives the initial complaint, the worker shall notify the appropriate local law enforcement agency in compliance with KRS 209.030(4)(a) using the DSS-115.

(k) When investigating reports of alleged abuse or neglect resulting in death, the worker shall examine the coroner's or doctor's report and if possible obtain a copy of the death certificate for the case record. The worker shall notify appropriate supervisory staff and:

1. If the findings of an investigation suggest an adult in the community died allegedly as a result of abuse or neglect, consult law enforcement for assistance in completing the investigation.

2. If the findings of an investigation suggest an adult in an alternate care facility died allegedly as a result of abuse or neglect, determine, in consultation with Licensing and Regulation, if other residents in the facility are at risk of abuse, neglect, or exploitation.

(l) Ascertain if there are other alleged victims of abuse, neglect or exploitation in the household or facility and report the allegation in compliance with KRS 209.030 and 620.030.

Section 4. Failure to Gain Entry. If an adult, a caretaker or a facility does not consent to an investigation and refuses to allow entry, the worker shall inform them of the cabinet's statutory authority to investigate. If entry is still denied, the worker shall notify DSS supervisory staff and determine if probable cause exists to pursue a search warrant or other legal remedy. An employee of the cabinet shall not attempt to serve a search warrant.

Section 5. Results of the Investigation. (1) The worker, as appropriate, shall address the following when determining the results of the investigation:

(a) The alleged victim's account of the situation;

(b) The alleged perpetrator's account of the situation;

(c) The information supplied by collateral contact;

(d) Records and documents;

(e) The assessment information;

(f) Previous reports involving the alleged victim or alleged perpetrator; and

(g) Other factors depending upon the type of report.

(2) The findings of the protective services investigation shall be documented on the DSS-292 and a written record shall be maintained by the worker to include:

(a) DSS-115, Confidential Report of Abuse, Neglect, Dependency or Exploitation;

(b) DSS-292, Adult Protective Services Investigation;

(c) A narrative documenting the investigation; and

(d) Voluntary written statements and photographs, if available, documenting the findings of the adult services investigations.

[~~(3) An assessment shall be done by the worker during investigations of adult abuse, neglect, exploitation, spouse abuse or when the worker is considering opening a general services case.~~]

Section 6. Opening a Case. (1) A case may be opened [~~with a goal of protective services~~] as a result of a protective services [~~protection~~] investigation or when an adult is identified through a general adult services assessment as being at risk of abuse, neglect, or exploitation. The decision to open a case shall be based on:

(a) The voluntary request for, acceptance of, or nonrefusal of services by an adult who needs adult protection or general adult services; or

(b) The need for involuntary emergency protective services.

(2) There shall be a case [~~treatment~~] plan developed with the client and appropriate others in each adult service case. Within thirty (30) working days [~~two (2) weeks~~] of the decision to open a case, the case [~~treatment~~] plan is initiated with the client and submitted to the family services office supervisor for approval. A copy of the case plan shall be given to the client and appropriate others with a copy of the DSS-154, see Fair hearing section, 905 KAR 1:320.

Section 7. Referrals for Criminal Prosecution. Substantiated

reports of abuse, neglect, or exploitation may be referred for consideration for criminal prosecution [~~to the Commonwealth's attorney or the county attorney~~].

Section 8. Involuntary Emergency Protective Services. The need for involuntary protective services shall be assessed by the worker when an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or others. If an adult lacks the capacity to consent or refuse to consent to receive emergency protective services, the cabinet may seek a court order authorizing the provision of these services on an emergency basis in compliance with KRS 209.100-130. The cabinet may either seek an ex parte order, or file a petition for an emergency protective service order, depending upon the adult's situation.

Section 9. Restraining Order or Injunctive Relief. In compliance with KRS 209.040 a court may issue a restraining order or injunctive relief upon proper application of the cabinet. Staff shall contact the office of counsel for advice and assistance in obtaining restraining orders or other forms of injunctive relief.

Section 10. Guardianship or Conservatorship of Disabled Persons. (1) The DSS worker shall assess the need for guardianship when an individual is identified who appears unable to manage personal affairs or carry out the activities of daily living. The worker may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing to become guardians.

(2) A worker's decision to file a disability petition shall be based on the following conditions:

(a) There is no one else willing to bring the petition;

(b) There is an urgent and bona fide need to initiate the action;

(c) There is assurance that filing the petition is in the best interest of the client; and

(d) The employee has discussed with and received approval of the district manager or designee.

(3) The family service worker may be appointed by the court, as a member of the interdisciplinary team and may be required to testify during disability court proceedings.

Section 11. Involuntary Hospitalization. (1) If the worker believes a client may be in need of hospitalization for mental health reasons, the worker shall encourage the client to secure mental health treatment.

(2) If a client refuses and all other resources are unavailable, a worker may file a petition for involuntary hospitalization in compliance with KRS 202A. Prior approval, if possible, shall be obtained from the district manager or designee.

Section 12. Domestic Violence and Abuse. Staff may assist individuals in petitioning the court for an order of protection in compliance with KRS 403.715 to 403.785. Reports received from law enforcement per KRS 403.785(1) that do not meet the criteria of KRS Chapter 209 may be assigned for assessment and services based on supervisory discretion.

Section 13. Material Incorporated by Reference. (1) Forms necessary for the implementation of adult protective services shall be incorporated effective January, 1991.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MASTEN CHILDERS II, Secretary
PEGGY WALLACE, Commissioner
APPROVED BY AGENCY: July 8, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1994, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 17, 1994: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are those adults in need of protection or at risk of abuse, neglect or exploitation. During FY '93 the department estimates in excess of 29,900 adults were affected in the 35,156 adult protection investigative reports.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

1. First Year: There are no direct or indirect first year costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

2. Continuing costs or savings: There are no continuing direct or indirect costs to the affected entities as the proposed regulations only clarify terminology in order to improve the existing regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the affected entities because the proposed regulations only clarify terminology in order to improve the existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the affected entities reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: There will not be any cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations and revises the requirement for initial notification of law enforcement if they were the source of the report.

(a) Direct and indirect costs or savings: There will not be any direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations and revises the requirement for initial notification of law enforcement if they were the source of the report.

1. First Year: There will not be any first year direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations and revises the requirement for initial notification of law enforcement if they were the source of the report.

2. Continuing costs or savings: There will not be any continuing direct or indirect cost or savings to the Department for Social Services as the proposed regulations only clarify terminology from the current regulations and revises the requirement for initial notification of law enforcement if they were the source of the report.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the DSS.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements for the department is the revision in the requirement for initial notification of law enforcement if they were the source of the report.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were considered as the proposed regulations only clarify terminology from the current regulations and revises the requirement for initial notification of law

enforcement if they were the source of the report.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(6) Any additional information or comments: There are no additional information or comments of which were are aware.

TIERING: Was tiering applied? No. This proposed regulation was not tiered as it implements adult protective services investigations procedures for all DSS offices statewide.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:022. Nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer Medicaid the 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 the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. The following definitions shall be applicable:

(1) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 13961 shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid program.

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Medicaid Services, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program) before the conditions of participation for Medicaid shall be deemed met.

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.)

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r, effective

with regard to admissions and resident stays occurring on or after January 1, 1989. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at 42 CFR 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status; a facility not appropriately certified shall not participate in the Medicaid program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990.

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services as approved by the state.

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this administrative regulation. A nursing facility or nursing facility with waiver may provide and receive payments for high intensity services provided to Medicaid eligible individuals meeting high intensity patient status criteria if the services are provided in beds also participating in the Medicare Program and a nursing facility or nursing facility with waiver may provide and receive payments for low intensity services provided to Medicaid eligible individuals meeting low intensity patient status criteria when the services are provided in any Medicaid participating beds; an ICF-MR may provide and receive payments for ICF-MR services only.

(2) A participating nursing facility may be certified, in accordance with standards and conditions specified in 907 KAR 1:545, Incorporation by reference of the nursing facility services manual, to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

Section 4. Determining Patient Status. Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) A patient shall not qualify for Medicaid patient status unless the person is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in 42 USC 1396r with regard to admissions and resident stays occurring on or after January 1, 1989.

(2) Patients qualify for high intensity nursing care when their needs mandate high intensity nursing or high intensity rehabilitation services on a daily basis and when, as a practical matter, the care can only be provided on an inpatient basis. Where the inherent complexity of a service prescribed for a patient exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for high intensity nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas shall qualify for high intensity nursing care:

(a) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(b) Nasogastric or gastrostomy tube feedings;

(c) Nasopharyngeal and tracheotomy aspiration;

(d) Recent or complicated ostomy requiring extensive care and self-help training;

(e) In-dwelling catheter for therapeutic management of a urinary tract condition;

(f) Bladder irrigations in relation to previously indicated stipulation;

(g) Special vital signs evaluation necessary in the management of related conditions;

(h) Sterile dressings;

(i) Changes in bed position to maintain proper body alignment;

(j) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(k) Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

(l) Initial phases of a regimen involving administration of medical gases;

(m) Receiving services which would qualify as high intensity rehabilitation services when provided by or under the supervision of a qualified therapist(s), for example: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status when the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status when the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;

2. Physical or environmental management for confusion and mild agitation;

3. Must be fed;

4. Assistance with going to bathroom or using bedpan for elimination;

5. Old colostomy care;

6. In-dwelling catheter for dry care;

7. Changes in bed position;

8. Administration of stabilized dosages of medication;

9. Restorative and supportive nursing care to maintain the patient and prevent deterioration of his condition;

10. Administration of injections during time licensed personnel is available.

11. Services that could ordinarily be provided or administered by

the individual but due to physical or mental condition is not capable of self-care.

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria when care needs are limited to the following:

1. Minimal assistance with activities of daily living;

2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;

3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;

4. Medications that can be self-administered or the individual requires minimal supervision.

(4) Evaluation of patient status for persons with mental disorders or mental retardation. A person with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) When the cabinet determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the patient, other patients in the facility, or staff of the facility; and

(b) When the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) When the patient does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and persons with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;

2. Learning to live happily and safely within his own limitations;

3. Obtaining educational experiences that will be useful in self-supporting activities;

4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only when the individual also has care needs as shown in paragraph (a) or (b) of this subsection, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded), and the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) It shall be the policy of the cabinet that no individual shall be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the patient no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Persons with Brain Injuries. Patients who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) when the care is preauthorized by staff of the Department for Medicaid Services using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators [~~Indications~~] for admission and continued stay [~~shall be as follows~~]:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis[~~, or cardiovascular accident with rehabilitation potential~~].

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following is a list of conditions which are not considered brain injuries requiring specialized rehabilitation under this section [~~are indicators that show it shall be inappropriate to preauthorize coverage for services provided in a certified brain injury unit~~]:

(a) Strokes treatable in [~~, (note:~~] nursing facilities providing routine [~~provide~~] rehabilitation services [~~that are expected to meet the needs of most stroke patients)~~];

(b) Spinal cord injuries in which there are no known or obvious injuries to the intercranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation[~~, developmental disabilities,~~] and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

(5) A patient may qualify for coverage under the brain injury

program if the patient meets low-intensity level of care and has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The patient shall not have previously received specialized rehabilitation services (persons discharged for the purpose of transfer to another brain injury facility are not considered to have "previously received specialized rehabilitation services") as provided for in this section;

(b) The patient shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Reserved Bed Days. The cabinet shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for nursing facilities and nursing facilities with wavier shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For intermediate facilities for the mentally retarded and persons with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

(3) Coverage during a recipient's absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The person shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. Persons for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) For [~~In the case of~~] leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994 [~~1, 1993~~].

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: June 29, 1994

FILED WITH LRC: June 30, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994 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: Masten Childers II

(1) Type and number of entities affected: An estimated 4 to 15 individuals should receive services of the type being added.

(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: *See below.

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: The costs are shown in the companion regulation, 907 KAR 1:025.

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 state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

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 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the cabinet for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Cost shall be considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Physical, occupational and speech therapy;

(b) Laboratory procedures;

(c) X-ray;

(d) Oxygen and other related oxygen supplies;

(e) Respiratory therapy (excluding the routine administration of oxygen);

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and

(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs)" means a facility certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (1) beds meeting all conditions of participation in the Medicare program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b)
(4)(C)(ii), unless the context specifies otherwise.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" means the direct costs associated with nursing services.

(7) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) shall be the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(9) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(11) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

(13) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(14) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(15) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(17) "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

Section 2. Reimbursement for Nursing Facilities (NFs) (Including Nursing Facilities with Waiver) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities (NFs) (including

nursing facilities with waiver) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services.

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds (but not less than ten (10) beds; for a facility with less than ten (10) beds, all beds) participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) beds, all beds) participate in the Medicare Program.

(4) The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the cabinet to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet and contained in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual, revised July 1, 1993 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the cabinet.

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;

2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or

3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year with prospective rates based on cost reports which are not audited or desk reviewed subject to adjustment when the audit or desk review is completed.

2. Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.

3. Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports are subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA).

b. The rural array shall include all facilities in non-SMSA counties.

c. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF/MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. Hospital dual licensed beds shall be paid at the hospital based facility upper limits;

d. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be equal to projected costs; and

e. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at $360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavorial sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.

4. Other factors relating to costs and upper limit determination shall be:

a. When the cabinet has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureaus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include, but shall not be limited to, notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist when an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the cabinet shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not

be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medicaid Program Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this administrative regulation or the "Kentucky Medicaid Program Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (9)(e) of this section) shall be determined in accordance with the methodology set forth in this administrative regulation for the reevaluation of assets of nursing facilities.

(a) An increase shall not be allowed in capital costs;

(b) The allowable historical base for depreciation for the purchaser shall be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price; and

(c) The amount of interest expense allowable to the purchaser shall be limited to the amount that was allowable to the seller at the time of the sale.

(11) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Cabinet approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet.

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI).

(a) Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in

excess of 110 percent of the median of the array.

(b) The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$ 96.99 & below	$1.38	$.87
97.00 -102.99	1.29	$.75
103.00 -108.99	1.18	$.62
109.00 -114.99	1.06	$.47
115.00 -120.99	.92	$.31
121.00 -126.99	.76	$.13
127.00 -133.49	*.53	----

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

(a)1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight).

2. The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency.

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement Operations, a reevaluation of the point at issue. This request shall be received within forty-five (45) days following notification of the prospective rate or forwarding of the desk review or audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing reimbursement review panel to be established by the commissioner.

(a) This request shall be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement Operations.

(b) The panel shall consist of three (3) members: one (1) member from the Division of Reimbursement Operations, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement Operations) as designated by the Commissioner, Department for Medicaid Services, with the designated member to act as chairperson of the review panel.

(c) A date for the reimbursement review panel to convene shall be established within twenty (20) days after receipt of the written request.

(d) The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(e) In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances in order to provide for equitable treatment and reimbursement of the provider.

(f) The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 15, 1994 [~~1, 1993~~].

MASTEN CHILDERS II, Commissioner, Secretary

APPROVED BY AGENCY: June 29, 1994

FILED WITH LRC: June 30, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994 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: Masten Childers II

(1) Type and number of entities affected: Will pay for coverage for an estimated 4 to 15 brain injured individuals.

(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: $1.1 million (costs).

2. Continuing costs or savings: $1.1 million (costs).

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.

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 state must comply with federal requirements contained in 42 USC 1396 et. seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

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 Mental Health and
Mental Retardation Services
(Proposed Amendment)

908 KAR 2:060. Mental health and mental retardation manuals for funding instructions, program policies and standards, billing instructions, reporting requirements, and reimbursement guidelines.

RELATES TO: KRS 210.370 to 210.460
STATUTORY AUTHORITY: KRS 210.440 to 210.450
NECESSITY AND FUNCTION: The Cabinet for Human Resources is directed by KRS 210.370 to 210.460 to allocate available funds to mental health/mental retardation boards in accordance with approved plans and budgets. KRS 210.440 and 210.450 authorize the Secretary for Human Resources to promulgate policies and regulations as to the operations, budgets and expenditures of community programs and to require reporting management and financial programs as necessary to carry out the purposes of KRS 210.370 to 210.460.

Section 1. Request for Funding Instructions Manual. The Cabinet for Human Resources incorporates the Request for Funding Instructions Manual, November 1, 1993, by reference. community mental health and mental retardation boards shall follow these instructions when preparing and submitting the annual plan and budgets to the cabinet. The manual includes the following: rate and allocation schedules, program plan, fiscal plan, waiver request, letter of assurance, and addenda. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 2. Program Policies and Standards. Manual. The Cabinet for Human Resources incorporates the November 1, 1993 edition of the Program Policies and Standards Manual by reference. The manual relates to general operating standards and particular service standards for services funded by the department. The standards contained shall be followed by those community mental health and mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 3. Cabinet for Human Resources Community Mental Health and Mental Retardation Reimbursement Manual, June 1, 1994 [~~July 1, 1993~~]. The Cabinet for Human Resources incorporates this manual by reference. This manual relates to the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those community mental health and mental retardation boards contracting with the cabinet. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth (4th) Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 4. Billing Instructions Manual. The Cabinet for Human Resources incorporates the Billing Instructions Manual, November 1, 1993, by reference. This manual relates to procedures for submission of payment requests to the department for defined services and special projects. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

Section 5. Reporting Manual. The Cabinet for Human Resources incorporates the Reporting Manual, November 1, 1993, by reference. This manual relates to reporting requirements on clients, services, and outcomes. A copy of the manual is on file for inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services, Fourth Floor, Leestown Square, Fairoaks Lane, Frankfort, Kentucky 40601.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m., in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Elizabeth Rehm Wachtel, Ph.D.
(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the department to provide mental health, mental retardation, and substance abuse services.
(a) Direct and indirect costs or savings to those affected: There is no direct or indirect costs or savings to the community MH/MR boards.
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: This regulation includes reporting and paperwork requirements of the community MH/MR boards in the submission of annual plans and budgets submission of billings, and outcomes of services provided.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: There is no direct or indirect costs or savings to the promulgating administrative body.
1. First year:
2. Continuing costs or savings:no 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: This regulation will not affect state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy in conflict. There is no overlapping or duplication.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because this regulation applies equally to all 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.

PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JULY 15, 1994

DEPARTMENT OF TREASURY

20 KAR 1:020. Unclaimed property; definitions; location of owners.

RELATES TO: KRS Chapter 393
STATUTORY AUTHORITY: KRS Chapter 13A, 393.280
NECESSITY AND FUNCTION: This administrative regulation sets out definitions for this and all administrative regulations relating to KRS Chapter 393, and establishes a policy to locate owners of unclaimed property.

Section 1. Definitions. For the purpose of this and all administrative regulations relating to unclaimed property, abandoned property, escheating, and those pursuant to KRS Chapter 393:

(1) "Claim" means the demand made by any person, who has, or appears to have, an interest in unclaimed property or the proceeds from the sale of unclaimed property.

(2) "Department" means the Department of the Treasury.

(3) "Holder" means any person having control, custody, or possession of money, rights to money, or other tangible or intangible personal property.

(4) "Owner" means any person entitled to receive or who has a legal interest in or claim against unclaimed property held by the department.

Section 2. The department shall make reasonable efforts to locate the owners of unclaimed property reported to the department, which may include, but not limited to:

(1) Contracted services with established firms, credit bureaus, telephone networking companies;

(2) Intergovermental agency agreements;

(3) Use of computerized information on telephone lists, directories, voter information, or other available data;

(4) Civic or professional meetings or gatherings; or

(5) Public media and printed material.

Section 3. The department shall deduct five (5) dollars or the proportionate share of the cost, whichever is higher, of the advertisement and the cost of preparing the advertisement required by KRS 393.110 from the amount of any claim allowed.

FRANCES JONES MILLS, Treasurer
APPROVED BY AGENCY: June 30, 1994
FILED WITH LRC: July 14, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 22, 1994, at 10 a.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann

(1) Type and number of entities affected: This will affect the operations of the Department of Treasury. It will also affect owners and holders of unclaimed property. Every citizen of Kentucky is a potential owner of unclaimed property. There are over 6500 holders on record.

(a) Direct and indirect costs and savings to those affected:

1. First year: It is the Treasury's mission to find owners of unclaimed property. There is an additional increase in advertising costs to those affected; an increase from $1 to $5 to each claimant-owner for advertising expenses. Owners who did not know that they had unclaimed property will benefit through being reunited with their property.

2. Continuing costs or savings: Continuing costs will be the same as first year. Continuing savings will be the same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There is no known competition. However, this regulation is meant to increase the state's efforts in finding owners of unclaimed property, which, could result in the reduction of work of professional unclaimed property finding companies that charge a high fee to owners. In the state's case there is only the advertising fee charged to owners.

(b) Reporting and paperwork requirements: There will be no increased reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: This regulation will help streamline the claims process and provide for a more efficient delivery of service to the public.

(a) Direct and indirect costs or savings:

1. First year: Direct and indirect costs will be $5000 for operating purposes. Savings will be a result of the fee increase for advertising purposes. Also, by increasing the efficiency of contacting owners of unclaimed property, it will reduce the administrative burden of maintaining certain unclaimed property inventory. An $8000 increase in advertising fees will result.

2. Continuing costs or savings: The costs required for this regulations will be encumbered in the first year. The additional savings will continued as noted in the first year.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation could result in the increase of claims over the current average of 2000 per year. It is estimated that an additional 300 claims will be received.

(3) Assessment of anticipated effect on state and local revenues: There is no increase in revenues anticipated.

(4) Assessment of alternative methods: reasons why alternatives were rejected: No alternative were considered. Regulation is necessary to set policy into definitive action.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no know conflict.

(a) Necessity of proposed administrative regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: This regulation will help set definitive policy and provide for efficient delivery of services.

TIERING: Is tiering applied? No tiering applies. This regulation applies to everyone.

DEPARTMENT OF TREASURY

20 KAR 1:030. Unclaimed property; escheating.

RELATES TO: KRS 393.090, 393.110
STATUTORY AUTHORITY: KRS Chapter 13A, 393.280
NECESSITY AND FUNCTION: This administrative regulation sets out the time when unclaimed property may be claimed by the rightful owner prior to escheating to the department. It also requires the holder to furnish the department a list(s) setting out specific items that have been returned to the rightful owner.

Section 1. If the rightful owner of unclaimed property claims his property between July 1 and the date the holder compiles his report of unclaimed property, as required by KRS 393.110, the holder shall not report such property because the presumption of abandonment as of July 1 no longer exists.

Section 2. If the rightful owner or legal claimant of property reported as presumed abandoned establishes his claim between September 1 and the deadline when all property in hands of the holder is turned over to the department, the holder shall certify by sworn statement to the department the specific items which have been returned to the rightful owner or legal claimant and, therefore, are not subject to escheat.

Section 3. KRS 393.090 covers dry trusts, bailments, escrow agreements, pledges, creditor-debtor relationships, or any other relationship by which property is held by one (1) person for the benefit of another, and where the property is not claimed within seven (7) years after the true owner was entitled to a return thereof. This section, however, does not apply to active trusts.

FRANCES JONES MILLS, Treasurer
APPROVED BY AGENCY: June 30, 1994
FILED WITH LRC: July 14, 1994 at 9 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 22, 1994, at 10 a.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann
(1) Type and number of entities affected: This replaces an identical regulation listed by Revenue Cabinet and does not increase or decrease anything or provides for any change. This applies to all holders of unclaimed property. It is estimated that 6500 holders are now on record.
(a) Direct and indirect costs or savings to those affected: No direct or indirect additional costs or savings as this is an identical regulation already listed in Revenue regulations which there it will be appealed.
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: There is no change on reporting and paperwork requirements.
(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: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods: reasons why alternatives were rejected: This is an identical regulation that replaces the Revenue version which is to be repealed.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The very same regulation now in the Revenue section is to be repealed. This will replace that one and apply it to the Treasury instead of Revenue.
(a) Necessity of proposed administrative regulation if in conflict: It was recommended that we resubmit this regulation and have Revenue repeal the existing one to make the process cleaner and simpler.
(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? This applies to holders of unclaimed property, which potentially could be any citizen. No tiering is applied here.

DEPARTMENT OF THE TREASURY

20 KAR 1:040. Unclaimed properties; claims.

RELATES TO: KRS 393.010, 393.040, 393.110, 393.140, 393.150
STATUTORY AUTHORITY: KRS Chapter 13A, 393.280
NECESSITY AND FUNCTION: This administrative regulation relates to the claims process for unclaimed property, which owners and heirs shall follow; and the proof necessary for authorization of a claim refund.

Section 1. Claims for unclaimed property or the proceeds from the sale of unclaimed property shall be filed with the department. Upon receipt of the initial claims inquiry from a person having an interest in the property, the department shall send the required claim forms to be completed by the claimant; and request necessary documentation as proof of ownership.
(1) Documentation to prove ownership shall consist of a driver's license or other picture identification, a document proving Social Security number; and, one (1) or more of the following:
(a) Copy of birth certificate(s);
(b) Copy of will(s);
(c) Copy of probate distribution(s);
(d) Copy of marriage certificate(s);
(e) Copy of divorce decree(s);
(f) Copy of documentation providing a connection with the reported address or business for the year cited as the "Date of Last Transaction" in the holder's report;
(g) Copy of letters testamentary;
(h) Copy of guardianship or trust agreement;
(i) Notarized affidavit executed by an individual other than the claimant having knowledge of, and in support of, a claim when requested information or documentation is not available;
(j) Signature verification cards of financial institutions;
(k) Family or church records, and personal correspondence;

(l) Newspaper articles, including marriage announcements and birth or obituary notices;

(m) Other documentation which may be used in support of the claim include an income tax return, adoption records, court records, CD's, stale dated checks, or other public or business records.

(2) In addition to items set out above, minimum requirements needed to establish ownership for various types of property shall be:

(a) Checking accounts: a check (blank or canceled) showing the account number for that bank, or a statement on that account which contains the account number;

(b) Savings account: a copy of the passbook showing the account number or correspondence referencing the account number;

(c) Safe deposit box: a copy of the safe-deposit box rental receipt or correspondence referencing that rental;

(d) Wages: copies of W-2 forms, tax records or correspondence relating to that employment;

(e) Stocks and/or dividends: copies of a stock certificate of the business entity reported, correspondence relating to the stock certificate or a statement from the broker showing purchase or sale of that stock;

(f) Bearer bonds and certificates of deposit: a copy of the record of purchase;

(g) Insurance: a copy of the policy, or correspondence relating to that policy by policy number;

(h) Court funds: a copy of the court decree or court order for the case that was the source of the funds. (i.e., probate, condemnation, quiet title, divorce, child support, and appearance bond);

(i) Vendor checks: copies of accounts receivable billing, invoices, bills of lading or correspondence with the holder reporting and remitting the funds that show a business relationship for each payment, or a statement that the funds are still considered to be due and owing on the account;

(j) Claims by heirs of listed owners: if the claim is based on hardship, one (1) or more of the following documents shall be required: final decree of probate; death certificate; or an affidavit of "Proof of Death and Heirship" executed by a person disinterested in the claim may be acceptable when the decedent's estate was not probated;

(k) Cashier's checks shall be claimed by the payee as the owner unless the purchaser submits sufficient documentation to prove a superior claim.

(3) Claims by finders or agents of listed owner. The claim shall be based on a notarized contract with the owner or heir of the owner. The department shall contact the owner(s) or claimant(s) to make sure that the owner or the claimant is aware of the full amount of unclaimed property involved. The finder or agent shall provide the department:

(a) A notarized copy of the contract showing names, current address, and Social Security number or Federal Employer Identification numbers of all parties to the contract; and

(b) A notarized affidavit from the owner or heir of the owner for the executive or power to act on his behalf. The affidavit shall also stipulate that the finder or agent has explained to the owner(s)/claimant(s) the state law on unclaimed properties and that any unclaimed properties due to the owner/claimant can be claimed without a fee, free and simple.

(4) Stock certificates received through safe-deposit boxes or directly from a holder will be released to the rightful owner by one (1) of the following methods:

(a) Stock certificate in the owner's name;

(b) Stock certificate in the name of the department with an affidavit ready for transfer to the owner;

(c) Payment of money received for the certificate if the certificate has been redeemed by the issuer or has been sold in accordance with state law; or

(d) Obsolete stock certificates in the original owner's name will be transferred directly to the owner. If the original owner is deceased, the lawful heirs must determine disposition.

Section 2. Payment of claims shall be authorized upon review of documentation submitted by claimant and approval by four designated department employees. Payment shall be made:

(1) In the name of, and mailed to, the established owner; or

(2) To the executor, executrix, administrator, administratrix of the estate or personal representative; the court appointed guardian; or to an heir for distribution to other heirs, if any.

FRANCES JONES MILLS, Treasurer

APPROVED BY AGENCY: June 30, 1994

FILED WITH LRC: July 14, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 22, 1994, at 10 a.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann

(1) Type and number of entities affected: To all claimants of unclaimed properties in the Commonwealth. There are an estimated 2000 claims made each year.

(a) Direct and indirect costs or savings to those affected: Costs are possible charges for notarizing documents, copying of official records and time involved in pursuing evidence for claims against the state for unclaimed property. Savings result in unclaimed property not be given to claimants who are not entitled to it, and a safeguard to rightful owners as a result of sound and absolute procedures for claims.

1. First year: Same costs and savings in (1)(a) to be carried out in first year.

2. Continuing costs or savings: Same costs and savings in (1)(a) to be carried out after first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There is no effect upon competition. There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There is some increase in terms of official documentation for each claimant of unclaimed property such as notarization and copies of court or official. This is necessary and essential to maintain security of unclaimed property and to protect the property for the rightful owners.

(2) Effects on the promulgating administrative body: This will assist the Treasury in maintaining and streamlining the claims process for unclaimed property. Everyone, both department and claimants will operate under the same rules, rules that are known and published.

(a) Direct and indirect costs or savings: There are about 2000 claims made each year on unclaimed property. Direct and indirect costs primarily will relate to increased efficiency in refunding unclaimed property to the rightful owners and minimizing wrongful refunds.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Processing of increased paper load will be necessary as a result of more official documentation.

(3) Assessment of anticipated effect on state and local revenues: Better control over claims of unclaimed property will result in improved service and less fraudulent claims.

(4) Assessment of alternative methods: reasons why alternatives were rejected: This is only improving on an exist system that has never promulgated up this time. There were no alternatives.

(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: Not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not in conflict.

(6) Any additional information or comments: This regulation will greatly benefit the Treasury in providing for efficient and sound refunding of unclaimed property to rightful owners.

TIERING: Is tiering applied? No tiering applied. This regulation applies to all citizens making a claim against the state for unclaimed property.

DEPARTMENT OF THE TREASURY

20 KAR 1:050. Unclaimed property; examination of holder records.

RELATES TO: KRS 393.010, 393.110, 393.160, 393.280

STATUTORY AUTHORITY: KRS Chapter 13A, 393.280

NECESSITY AND FUNCTION: This administrative regulation relates to the examination of holder records by the department if any holder fails to make a full and complete report of property as required by KRS Chapter 393.

Section 1. If any holder fails to make a full and complete report of property as required by KRS Chapter 393, the department, after giving notice as provided in subsection (1) of this section, may examine the records and other accounts of the holder.

(1) The department shall notify the holder in writing ten (10) days prior to an examination. However, if the department determines that the existence of the records may be placed in jeopardy unless action is taken forthwith, the department may examine all records immediately without any prior notice.

(2) The examination may include:

(a) Records of current accounts, dormant accounts, and accounts that may have been closed and archived;

(b) Verification of contractual agreements between depositors and the final organization regarding the deduction of service charges, account increases or decreases, and the cessation of interest payments; and

(c) In addition to the examination of unclaimed accounts and contractual agreements, the examiner may review the holder's annual procedures for reviewing dormant accounts.

(3) The department shall have reason to believe that a holder has failed to comply with the reporting requirements of KRS Chapter 393 and may examine the records of the holder if one (1) of the following conditions exist:

(a) A holder has not submitted a report to the department;

(b) A holder has submitted reports to the department in which the holder's report states it has no unclaimed property;

(c) A holder fails to report types of unclaimed property normally reported by like businesses or associations;

(d) When amounts on the holder's report or amounts remitted from the holder are not comparable to reports received from like holders; and

(e) When information is provided by other governmental agencies or reliable sources that a holder may be holding unclaimed property that has not been reported.

(4) At the completion of an examination a statement of examination findings and proposed adjustments shall be delivered to the holder. The statement shall be delivered by the department by hand or by certified mail. The statement shall contain sufficient information to make the holder aware of his reporting obligations and legal options.

(5) The holder shall have thirty (30) days in which to review the examination findings and proposed adjustments to the findings. No later than thirty (30) days of the date of the statement, the holder shall cause to be generated an amended annual report. If the holder disagrees on the facts, he must file an official written protest within the thirty (30) day period or the amount as set out by the statement will become absolute and final and be immediately due and payable. The protest shall be filed with the department and shall set out a clear and concise assignment of any error alleged to have been committed by the department in its examination or its statement. The holder may request an administrative hearing in its protest.

FRANCES JONES MILLS, Treasurer

APPROVED BY AGENCY: June 30, 1994

FILED WITH LRC: July 14, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 22, 1994, at 10 a.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann

(1) Type and number of entities affected: Affects over 6500 holders of unclaimed properties. Can be applied to any citizen who holds unclaimed property.

(a) Direct and indirect costs or savings to those affected: Would be a cost only to those who do not comply with KRS Chapter 393 and fails to report unclaimed property. Not all 6500 holders will be subject to this regulation.

1. First year: It is estimated that 30 audits will be conducted in the first year. This could result in a cost of an estimated $1000 per audit.

2. Continuing costs or savings: It is estimated that an additional 30 audits at the same cost of the first year will be conducted.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There is no effect upon competition. No additional factors.

(b) Reporting and paperwork requirements: For those holders requiring audits either a corrected holder report, due yearly, and required documentation will be necessary.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Direct costs are the additional staffing of compliance officers and auditors, which has been budgeted. Savings will result in $500,000 in additional unclaimed property being reported to the state the first years, and $1,000,000, the second and each subsequent year thereafter.

1. First year: Costs of $89,000 in staffing of compliance officers and auditors. An additional $500,000 in unclaimed property will be reported.

2. Continuing costs or savings: The cost of $89,000 in staffing. An additional $1,000,000 will be reported.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Additional paperwork will be required as a result of audits and compliance techniques.

(3) Assessment of anticipated effect on state and local revenues: An estimated $1,500,000 will be generated in the next 2 fiscal years; It will average $1,000,000 each fiscal year in new revenue generated.

(4) Assessment of alternative methods: reasons why alternatives were rejected: None considered.

(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: No conflict evident.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict evident.

(6) Any additional information or comments:

TIERING: Is tiering applied? Tiering is not applied. This regulation applies to all holders of unclaimed properties who do comply with KRS Chapter 393. Any citizen is a potential holder of unclaimed property.

DEPARTMENT OF THE TREASURY

20 KAR 1:060. Unclaimed property; safe deposit boxes or other safekeeping repositories.

RELATES TO: KRS 393.010, 393.020, 393.050, 393.060, 393.062, 393.064, 393.090, 393.110, 393,120

STATUTORY AUTHORITY: KRS Chapter 13A, 393.280

NECESSITY AND FUNCTION: This administrative regulation relates to the reporting, inventory, safekeeping and liquidation of unclaimed property from holders who maintain safe deposit or other safekeeping repositories.

Section 1. Pursuant to KRS Chapter 393, every holder maintaining safe deposit boxes or other safekeeping repositories located in the Commonwealth shall report to the department with an inventory of property in its possession which constitute unclaimed funds.

(1) An inventory report shall be submitted for each safe deposit box or safekeeping repository. Each report shall be signed by two (2) officials of the holding company who opened the safe deposit box or safekeeping repository and conducted the inventory. Each report shall include a statement containing the following information:

(a) The name, last known address, and Social Security number of owner;

(b) The expiration date of the lease or rental agreement for such safe deposit box or other safekeeping depository;

(c) The date of opening of such safe deposit box or other safekeeping repository;

(d) The number or identifying description of the safe deposit box or other safekeeping repository;

(e) A detailed list describing each item therein;

(f) The name and address of the holder reporting the property; and

(g) The names, signatures, and official positions of the two (2) holding company employees who opened the box and conducted the inventory.

(2) The property of each safe deposit box or safekeeping repository shall be placed in an individual envelope. A copy of the holder inventory report shall be placed in the envelope. The envelope shall be sealed and initialed on the reverse side by the two (2) holding company employees who conducted the inventory. The name of the owner of the box, date, and holder name shall be printed on the reverse side of the envelope. Transparent sealing tape (of the strong bonding type) shall be placed over the flap of the envelope. A second copy of the holder inventory report shall be attached to the front of the envelope.

(3) The holder shall mail a copy of the report(s) and notify the department of pending delivery of property.

(4) The holder shall be responsible for the secured delivery of the contents of each safe deposit box or other safekeeping repository to the department. The department may take direct delivery from the holder at the holder's place of business or residence.

Section 2. Upon receipt of the contents of the safe deposit box(es) or other safekeeping repository(ies), along with the inventory report(s), the department shall immediately conduct an inventory of property delivered, verify holder report(s), and secure property in the department vault.

(1) The inventory shall be conducted by two (2) department employees with appropriate supervision.

(2) The contents of each envelope will be separated into the following groups:

(a) TNG - jewelry with gemstones, watches and other valuables;

(b) MNY - coins and paper money (foreign & domestic) which have numismatic value;

(c) STK - stock certificates;

(d) BND - U.S. Savings Bonds;

(e) INS - insurance policies;

(f) CSH - Coins and paper money which do not have numismatic value;

(g) DST - items of no value; and

(h) OTH - military discharge, birth certificate; photos,etc.

(3) Each item shall be assigned an identification or serial number. A property tag shall be prepared for each group with an assigned owner identification or serial number, name of owner, and Social Security number if available. The groups of tangible property will be placed in individually secured plastic bags. The groups of intangible property shall placed into folders.

(4) A detailed department inventory statement shall be completed for each safety deposit box or safekeeping repository envelope received. Each statement shall include the following information:

(a) The name and last known address of the owner(s);

(b) The name and address of holder reporting the property;

(c) Date of delivery and holder inventory;

(d) Date of holder inventory;

(e) Number or identifying description of the safe deposit box or safekeeping repository;

(f) Date of department inventory;

(g) A detailed list describing each item therein, separated into groups as stated in subsection (2) of this section;

(h) The assigned holder identification or serial number;

(i) The assigned owner identification or serial number; and

(j) An official note signed by department employees, who conducted the inventory, verifying accuracy of holder report. The note shall be signed for approval by a supervisor.

(5) Property shall be secured in the department vault for safekeeping purposes. Tangible property shall be retained for a period of three (3) years and then put to public auction, pursuant to KRS Chapter 393, and proceeds, less costs, paid to the state. Intangible property shall be retained for a period of one (1) year, then liquidated and the proceeds, less costs, paid to the state. Owners of property shall be credited for the amount received through liquidation or auction.

(a) Coins and paper money not of numismatic value shall be deposited for the state immediately and a copy of the pay-in voucher placed in owner's file;

(b) Miscellaneous papers or property of no value shall be retained

for a period of three (3) years and, then, destroyed.

(c) The Kentucky Historical Society shall be contacted for determination of items of historical value. Papers or property determined to have historical value shall be retained and may be loaned to the society.

(6) The department shall maintain an accurate inventory and essential information through entry into the computer.

(7) The department shall direct that two (2) employees be present at all times when handling property. Security of property in the vault shall be maintained by the following procedure:

(a) Two (2) employees shall receive written authorization from a supervisor prior to entry to the vault; and

(b) The employees shall state in writing the purpose, property to be handled, the time and date.

FRANCES JONES MILLS, Treasurer

APPROVED BY AGENCY: June 30, 1994

FILED WITH LRC: July 14, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 22, 1994, at 10 a.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann

(1) Type and number of entities affected: Estimated 350 financial institutions and any Kentucky citizen who may have safety deposit boxes.

(a) Direct and indirect costs or savings to those affected: No costs to the citizens; savings can be determined by the safekeeping of unclaimed property in the safety boxes affected. Banks and other financial institutions are now required to inventory boxes and currently operate under different guidelines. This regulation will streamline the process and make it the same for all concerned. This should have no additional financial impact either way.

1. First year: Same as (1)(a).

2. Continuing costs or savings: Same as (1)(a).

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Current reporting and paperwork will have some increased effect. New forms will have to be used and additional copies provided.

(2) Effects on the promulgating administrative body: This regulation will greatly benefit the Treasury in providing for an accurate and specific account and safekeeping of tangible and intangible unclaimed property reported by financial institutions. It will help streamline the administrative process and save at least a portion of time on two employees.

(a) Direct and indirect costs or savings: No additional costs. Will save in time of manhours currently being spent on process.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Actually will streamline the reporting and paper flow.

(3) Assessment of anticipated effect on state and local revenues: Should increase the return of unclaimed property from financial institution. Actual revenue increase can vary depending on contents of safety deposits boxes.

(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 administrative 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: Regulation necessary to streamline reporting process. Provides for one rule for all concerned.

TIERING: Is tiering applied? Tiering is applied for financial institutions who handle safety deposit boxes, however, this could apply to any entity that maintains safety deposit boxes. It also affects any citizen who may own a safety deposit box through a financial institution or other entity. This would not affect any citizen who does not have a safety deposit box or a financial institution who does not have any unclaimed property in safety deposit boxes.

DEPARTMENT OF TREASURY

20 KAR 1:070. Unclaimed property; administrative hearing, appeals process.

RELATES TO: KRS 393.010, 393.160

STATUTORY AUTHORITY: KRS Chapter 13A, 393.280

NECESSITY AND FUNCTION: This administrative regulation sets out the appeals and administrative hearings process when a department decision regarding unclaimed property adversely affects a person.

Section 1. Any person adversely affected by a decision of the department may appeal the decision and request an administrative hearing.

(1) Upon receipt of a written request for an administrative hearing, the department shall immediately set the date, time, and place of hearing and forthwith notify the person by regular U.S. mail. The date set for the hearing shall be within thirty (30) days from the date the written request was received, unless otherwise agreed by the parties.

(2) The Treasurer shall appoint a hearing officer to conduct the hearing.

(3) The hearing officer shall make findings of fact, conclusions of law, and enter a final order.

FRANCES JONES MILLS, Treasurer

APPROVED BY AGENCY: June 30, 1994

FILED WITH LRC: July 14, 1994 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 22, 1994, at 10 a.m., in Room 125, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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: Frank Leidermann, State Treasury, 183 Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-4722.

REGULATORY IMPACT ANALYSIS

Contact Person: Frank Leidermann

(1) Type and number of entities affected: All citizens of Kentucky who wish to appeal a decision on unclaimed property made by the Treasury.

(a) Direct and indirect costs or savings to those affected: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Would require a written appeal letter from citizen making appeal.

(2) Effects on the promulgating administrative body: Provides for due process for decisions being made by Treasury regarding unclaimed property.

(a) Direct and indirect costs or savings: Partial cost of attorney, as budgeted, estimated to be $6000.

1. First year: Same as (2)(a).

2. Continuing costs or savings: Same as (2)(a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Letters and decisions on appeals heard would increase current paper flow.

(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 administrative 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: Regulation is necessary to provide due process for those citizens who wish to appeal a decision by the Treasury regarding unclaimed property.

TIERING: Is tiering applied? Tiering does not apply. This regulation applies to all citizens who wish to appeal a decision of the Treasury regarding unclaimed property.

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 1:100. Slate software.

RELATES TO: KRS 121.180

STATUTORY AUTHORITY: KRS 121.140(4)

NECESSITY AND FUNCTION: KRS 121.140(4) requires the Registry of Election Finance to "adopt official forms and perform other duties necessary to implement the provisions of this chapter and KRS Chapter 121A." With the reduction in contribution limits and increased disclosure requirements, as well as the requirement that slates of candidates report with much greater frequency, the amount of data which slates will file with the registry will be much greater than has been true of past campaigns. It is the registry's belief that the best way for the agency to implement the Public Financing Campaign Act of 1992 is through the use of the Election Information Management System, a software program tailored to assist slates in complying with the specific provisions of Kentucky law. The government side of the program will allow the registry to analyze massive quantities of data within the time frame required by statute. Because slates may begin to file to run in the 1995 race on July 15, 1994, it is necessary to promulgate this administrative regulation to adopt this program as the filing form for the 1995 gubernatorial campaign.

Section 1. (1) As authorized by KRS 121.140(4), the Registry of Election Finance hereby prescribes KREF 94-006/G, the Election Information Management Systems software (Copyright 1993-4, Election Technology Company) as the report form to be utilized by all slates of candidates for Governor and Lieutenant Governor. The software shall be made available at no charge to each slate of candidates which files with the Secretary of State and registers a slate campaign committee with the registry.

(2) All slates shall file campaign finance reports by filing on diskette, accompanied by one (1) paper copy.

Section 2. Material Incorporated by Reference. Form KREF 94-006/G, Election Information Management Systems (Copyright 1993-94, Election Technology Company) and accompanying documentation is hereby incorporated by reference and is on file with the Administrative Regulations Compiler or may be obtained from the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., local time.

JOSEPH H. TERRY, Chair

APPROVED BY AGENCY: July 8, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 24, 1994, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1994, 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) 573-2226.

REGULATORY IMPACT ANALYSIS

Contact Person: Anita Stanley

(1) Type and number of entities affected: This emergency administrative regulation affects all slates of candidates for Governor and Lieutenant Governor.

(a) Direct and indirect costs or savings to those affected:

1. First year: Because the registry is requiring only slates of candidates for Governor and Lieutenant Governor to utilize this software, the registry will supply the program to each slate free of charge. Therefore, the only cost to affected entities will be the cost of diskettes and preparation of the reports.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition: None

(b) Reporting and paperwork requirements: Reporting requirements will remain unchanged, but since the software program actually generates the campaign finance reports from data stored within, the paperwork generated by the preparation of reports should be made much easier for the slates.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This system will save the registry countless hours of staff time, since manual data input by registry staff will no longer be necessary. A direct cost will be incurred of $225 per slate. All necessary hardware has already been purchased.

2. Continuing costs or savings: Continued savings will result to the registry because of the multiple uses of the system in-house.

Eventually, the agency's annual report will be generated through the system in a much more efficient manner than has been possible in the past.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Data management will be tremendously enhanced by use of this system. Paperwork will be minimized, although reporting requirements will remain unchanged.

(3) Assessment of anticipated effect on state and local revenues: There is no effect anticipated on state and local revenues. All costs to the agency are covered by current appropriations.

(4) Assessment of alternative methods; reasons why alternatives were rejected: As the 1995 gubernatorial campaign draws closer, the registry has considered many avenues which would allow the agency to implement the complex provisions of public financing in the most efficient manner possible. The Department for Information Services worked with the agency in ascertaining the availability of other software programs, or if a similar system could be developed in-house, and it was determined that this was the best approach. This software has been designed to mirror Kentucky law and to assist slates in complying with those provisions.

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

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: The manner in which campaigns for Governor and Lieutenant Governor are financed will be completely different in the future because for the first time, public funds will be made available for qualifying slates. The registry firmly believes that the use of this system will enhance the agency's ability to ensure that the provisions of the Public Financing Campaign Act will be implemented in a very efficient manner, with the greatest possible accountability.

TIERING: Is tiering applied? Tiering was not applied because the administrative regulation applies uniformly to all affected entities, which includes all slates of candidates for Governor and Lieutenant Governor.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:061. Repeal of 40 KAR 2:060, Business opportunities.

RELATES TO: KRS 367.801-.819

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.803

NECESSITY AND FUNCTION: 40 KAR 2:060 is no longer required because of amendments to KRS 367.803.

Section 1. 40 KAR 2:060, Business opportunities is hereby repealed.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda R. Delaplane

(1) Type and number of entities affected: There will be change to any entities as any seller of business opportunities which had been required to register pursuant to the 40 KAR 2:060 will be required to register pursuant to the KRS 368.803, amendments of HB 469.

(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):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(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 identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:070. Procedure for registration of telephone solicitation merchants.

RELATES TO: KRS Chapter 367 (SB 168, §§7, 8, 10)

STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (SB 168, §11), 367.150(4)

NECESSITY AND FUNCTION: To regulate the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations.

Section 1. Definitions. "Material change" in reported information required by KRS Chapter 367 (SB 168, §7) means any additions or deletions of factual matter which would have a significant consequence in the evaluation of the application if it were contained in the original filing, such as but not limited to:

(1) Any association with any officer, director, trustee, general or limited partner, sole proprietor, owner, or person having management responsibility in the applicant's business activities whose past occurrences would have been required to have been reported in an original application pursuant to KRS Chapter 367 (SB 168, §7);

(2) Filing of any bankruptcy petition by applicant;

(3) Any filing by any governmental agency against the applicant which, upon resolution, would have been required to be reported pursuant to KRS Chapter 367 (SB 168, §7);

(4) Any change in sales presentations, scripts, sales literature, or similar documentation, which significantly changes the predictions of value of goods or service offered, or the likelihood of profit in any investment opportunity offered, which would have been required to have been originally reported pursuant to KRS 367 (SB 168, §7).

Section 2. Registration Required. (1) No merchant may solicit sales by telephone in the Commonwealth of Kentucky without complying with all registration requirements of KRS Chapter 367 (SB 168, §§7, 8, 10). All applications for registration shall be in writing on a form as provided herein, verified and signed by the applicant under the penalty of perjury, and accompanied by the required registration fee to be deposited in the trust agency account maintained by the Attorney General's Office to be used to defray the cost of telemarketing registration.

(2) Applicants shall utilize form OAG effective July 15, 1994, hereby adopted and incorporated by reference.

(3) An application may be withdrawn prior to approval by submitting a written request that the application be withdrawn.

(4) An application is withdrawn or denied any fees received shall be retained by the Attorney General's Office to be deposited in a trust agency account maintained by the Attorney General's Office to be used to defray the cost of telemarketing registration.

Section 3. A surety bond shall be maintained in the amount of $50,000 issued by a surety company admitted to do business in the Commonwealth of Kentucky. The bond shall be in favor of the Attorney General for the benefit of any person suffering injury or loss by reason of any violation of KRS Chapter 367 (SB 168). In addition, a surety bond shall be required in addition in the amount sufficient to cover the amount of the value of any sales premium which is held out or advertised in telephone sales solicitations.

Section 4. Any applicant or any telephone solicitation registration shall be deemed to have consented to the application of KRS Chapters 367 and 526 by the use of any electronic equipment in conducting telephone solicitations sales within the Commonwealth of Kentucky.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: June 15, 1994

FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: David Vandeventer

(1) Type and number of entities affected: The only entities affected are nonexempt telemarketers. Based on the experience of other states, we project fewer than 100 in the first year.

(a) Direct and indirect costs or savings to those effected:

1. First year: The proposed regulation imposes no direct or indirect costs or savings to the telemarketers during the first year, other than administrative expenses in filing a registration and a $300 fee.

2. Continuing costs or savings: Statement from (1)(a)1 is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The registration is intended to provide a substantial amount of data, however, it is similar to the requirements of other states, so the costs can be spread over many states, and the added cost of compliance with the statute should be minimal. In the event that a hearing is requested, additional paperwork will be required. The additional cost is impossible to estimate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: During the first year, there will be a direct cost as the Division of Consumer Protection will have responsibility under the regulation for conducting a due process hearing which was not previously required. This will require additional staff time. However, the new statute imposes a new fee requirement for registration which will be available for covering this additional cost.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to conduct due process hearings and provide the bond forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:080. Prehearing procedure for rejection, revocation, suspension of registration or refusal to renew certification of professional solicitors or fundraising consultants.

RELATES TO: KRS Chapter 367 (HB 474, §5)

STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (HB 474, §5), 367.150(4)

NECESSITY AND FUNCTION: KRS 367.650 requires in pertinent part the Office of the Attorney General, Division of Consumer Protection to promulgate administrative regulations pertaining to the operation of charitable solicitors and fundraiser with the Commonwealth. This administrative regulation sets forth initial procedures for

a due process hearing for the rejection, revocation, suspension, of registration or refusal to renew a registration of professional solicitors or fundraising consultants.

Section 1. Notice of Hearing. (1) Prior to rejecting, revoking, suspending registration, or refusing to renew the solicitor's or consultant's registration, the Attorney General shall send by registered or certified mail return receipt requested written notice stating the action to be taken, the grounds for the action, and the date the hearing will be held as well as the name, official title and mailing address of the hearing officer.

(2) The notice shall be delivered to the solicitor or consultant at his most recent address, as listed in the registration statement.

(3) Within seven (7) calendar days after receiving a notice that filing requirements as set forth in KRS Chapter 356 are not satisfied, the professional solicitor or fundraiser may request a hearing. In the event no hearing is requested, the Attorney General may proceed with a hearing.

(4) The hearing shall be held within fourteen (14) calendar days of the Attorney General's receipt of the request for a hearing.

Section 2. Complaints and Answers. (1) Upon a request for a hearing from a professional solicitor or fundraising consultant, or upon his own initiative, a complaint shall be prepared by the Attorney General.

(2) A complaint shall contain a concise statement of the facts, transaction or occurrence upon which it is based.

(3) A complaint shall be notarized.

(4) Exhibits or other documents, shall be attached to the complaint.

(5) A copy of the complaint and attachments shall be served on the professional solicitor or fundraising consultant or their designee by the Attorney General:

(a) At the last known address of the solicitor or consultant;

(b) By certified mail, return receipt requested.

(6)(a) The solicitor or consultant shall file with the hearing officer an answer to the complaint.

(b) The answer shall be notarized.

(c) The answer shall be filed with the hearing officer within twenty (20) days after service of the complaint.

(d) A copy of the answer shall be served on the Attorney General by the solicitor or consultant by certified mail, return receipt requested to the address shown on the complaint.

Section 3. Counsel. If a party has retained counsel:

(1) The attorney shall file an entry of appearance with the hearing officer;

(2) Notices, correspondence, and orders relating to the hearing shall be transmitted to the attorney; and

(3) Motions, requests, or filings on behalf of a party or appraiser shall be made by the attorney.

Section 4. Motions, requests, filings, and other material filed with the hearing officer shall:

(1) Be served on the other party by certified mail, return receipt requested; and

(2) Contain a signed statement that service on the other party has been made.

Section 5. Witnesses. A party shall file a list of his witnesses:

(1) With the hearing officer;

(2) At least ten (10) days prior to the hearing.

Section 6. Subpoenas. (1) A party shall file a written request to the presiding officer at least fourteen (14) days prior to a hearing if the party wishes to:

(a) Subpoena a witness; or

(b) Require the production of a document.

(2) The request shall contain the:

(a) Name and address of residence and place of employment, including county, of the witness;

(b) Name of document or item, with a description sufficient to identify the document or item.

Section 7. Continuance. (1) A hearing may be continued by the hearing officer:

(a) To permit any prehearing procedures; or

(b) For other good cause.

(2) If it is necessary to continue a hearing, the hearing officer shall:

(a) Reschedule the hearing; and

(b) Notify the parties.

(3)(a) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the hearing officer at least seven (7) working days before the hearing.

(4) A motion for continuance may be filed upon the occurrence of an emergency.

(5) The hearing officer shall notify a party of his decision in writing.

Section 8. Prehearing Conference. (1) The hearing officer may schedule a prehearing conference:

(a) On his own motion; or

(b) Upon motion of a party.

(2) The hearing officer shall schedule a prehearing conference if the hearing officer determines that it will:

(a)1. Establish stipulations;

2. Clarify issues;

3. Identify witnesses;

4. Resolve issues relating to:

a. Evidence;

b. Subpoenas;

c. Discovery; or

d. Protective orders; and

(b) Otherwise promote the orderly and prompt conduct of the hearing; or

(c) Promote settlement of the issues.

(3) If the prehearing officer schedules a prehearing conference, the prehearing officer shall notify the parties in writing:

(a) Of the date, time and place of the prehearing conference; and

(b) That they are required to attend the prehearing conference.

(4)(a) The hearing officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.

(b) A copy of the prehearing order shall be mailed to the parties.

Section 9. Discovery. (1) A request to obtain discovery shall be filed with the hearing officer.

(2) The request shall:

(a) Specify the type of discovery requested;

(b) Where applicable, describe in sufficient detail:

1. Names and addresses of persons or items;

2. Documents, other items, or places; and

(c) State the reason discovery is requested.

(3) The hearing officer may deny, limit, or require discovery.

(4) Discovery may be obtained by:

(a) Written or oral depositions;

(b) Interrogatories;

(c) Production or inspection of documents or things;

(d) Permission to photograph, or enter upon land or other property; or

(e) Physical or mental examinations.

Section 10. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to a complaint.

(2) A settlement agreement:
(a) Shall be subject to approval by the hearing officer; and
(b) If approved by the hearing officer, shall constitute:
1. A waiver of a party's right to an administrative hearing; and
2. The final order of the hearing officer.

Section 11. Motions. A motion shall be:
(1) In writing;
(2) Signed; and
(3) Filed with hearing officer.

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda R. Delaplane

(1) Type and number of entities affected: The only entities affected are the individuals currently registered as professional solicitors or fundraising consultants with the Division of Consumer Protection, Office of the Attorney General. That number is currently 90. Also any others who wish to begin raising funds in Kentucky on behalf of a charitable organization will also be affected but it is impossible to predict how many entities might be in that position.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes no direct or indirect costs or savings to the solicitors or fundraisers during the first year, unless they file for an administrative hearing. In that event, they will have the costs associated with the hearing.

2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the solicitors and consultants, the new requirements will not require any additional paperwork or reporting, unless a hearing is requested. In that event, additional paperwork will be required. The additional cost is impossible to estimate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: During the first year, there will be a direct cost as the Division of Consumer Protection will have responsibility under the regulation for conducting the due process hearing which was not previously required. This will require additional staff time. However, the new statute imposes a new fee requirement for registration which will be available for covering this additional cost.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to conduct due process hearings and provide the bond forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:090. Hearings for rejection, revocation, suspension of registration or refusal to renew registration of professional solicitor or fundraising consultant.

RELATES TO: KRS Chapter 367 (HB 474, §5)

STATUTORY AUTHORITY: KRS 15.180, 367.6 (HB 474, §5(2)), 367.150(4)

NECESSITY AND FUNCTION: KRS 367.6 requires in pertinent part the Division of Consumer Protection to promulgate administrative regulations pertaining to the operation of charitable solicitors and fundraisers within the Commonwealth. This administrative regulation sets forth hearing and conference procedures for the permanent regulatory program including the rejection, revocation, suspension and refusal to renew registration certificates of professional solicitors or fundraising consultants.

Section 1. Purpose and Construction. When the Attorney General through the Division of Consumer Protection has determined and given notice that the registration of a professional solicitor or fundraising consultant shall be revoked, suspended, or refused to be renewed in accordance with KRS Chapter 367, any professional solicitor or fundraising consultant so affected is entitled to due process. Accordingly, this administrative regulation shall be liberally constructed so as to aid in that process.

Section 2. A party may:
(1) Represent himself; or
(2) Be represented by:
(a) An authorized representative; or
(b) Counsel.

Section 3. Hearing Officer. A hearing officer shall be appointed and serve pursuant to KRS Chapter 13B (HB 334, §§ 3 and 4).

Section 4. Evidence. (1) Formal rules of evidence shall not apply.
(2) The hearing officer shall exclude evidence that is:
(a) Irrelevant;
(b) Immaterial;
(c) Unduly repetitious; or
(d) Excludable on:
1. Constitutional or statutory grounds; or
2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.

(3) Testimony or other evidence shall be admitted if it is:

(a) Based on facts; and

(b) Commonly relied upon by reasonably prudent persons.

(4)(a) Evidence shall not be excluded solely because it is hearsay.

(b) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing relevant evidence.

(5) The hearing officer may admit party or witness testimony taken by deposition if:

(a) A party or witness is unable to attend through no fault of his own; and

(b) The opposing party has had a full opportunity to cross-examine the party or witness.

(6) Evidence may be received in written form if it will:

(a) Expedite the hearing; and

(b) Not substantially prejudice the interest of a party.

(7)(a) A copy or an excerpt of documentary evidence may be received.

(b) Upon request, a party shall be permitted to compare the copy or excerpt with the original.

(8) Official notice shall be taken of:

(a) A fact that would be judicially noticed in the courts of the Commonwealth;

(b) The record of other proceedings before the Division of Consumer Protection;

(c) Technical or scientific matters within the specialized knowledge of the Division of Consumer Protection;

(d) Codes or standards that have been adopted by:

1. An agency of the United States, the Commonwealth, or another state; or

2. A nationally recognized organization or association, and incorporated by reference as provided by KRS Chapter 13A.

Section 5. Ex parte Communications. (1) Except as provided in this section, a hearing officer, a party, or a person with a direct or indirect interest in the outcome of a pending hearing, shall not communicate, directly or indirectly, with regard to an issue of a pending hearing with a:

(a) Party;

(b) Person who has a direct or indirect interest in the outcome of the hearing; or

(c) Person who presided at a previous stage of the hearing.

(2) Communications prohibited by the provisions of this section may be made if:

(a) Written notice is given to other parties; and

(b) Other parties are permitted to participate in the communication.

(3) A hearing officer may communicate with staff assistants, or other Division of Consumer Protection personnel, if they:

(a) Have not received ex parte communications that are prohibited to the hearing officer; and

(b) Do not furnish, augment, diminish, or modify the evidence in the record.

(4) If prior to serving as the hearing officer of a hearing, the hearing officer has received an ex parte communication that person is prohibited from receiving as a hearing officer, he shall:

(a) Place on the record of the pending hearing:

1. The written communications received;

2. The written responses to them;

3. A memorandum stating oral communications and responses; and

4. The identity of the person from whom a communication was received; and

(b) Notify and transmit copies of the items specified in subparagraph 1 of this paragraph to the parties to the hearing.

(5) Within ten (10) days of receipt of the hearing officer's notice and transmittal, a party may:

(a) Rebut the prohibited communications specified in this section; or

(b) File a motion with the Division of Consumer Protection to:

1. Disqualify the hearing officer; and

2. Seal the portions of the record pertaining to the prohibited communications.

(6) The Division of Consumer Protection shall:

(a) Report any willful violation of this section to the Attorney General or his designee for disciplinary proceedings; and

(b) Take disciplinary action authorized by statute or administrative regulation of the Division of Consumer Protection.

Section 6. Separation of Functions. (1) A person shall not serve as a hearing officer of a hearing, or assist or advise a hearing officer in a hearing, if that person has served as an investigator, prosecutor, or advocate with regard to the subject matter of the hearing.

(2) The provisions of subsection (1) of this section shall apply to a person who is subject to the authority, direction, or discretion of persons specified in subsection (1) of this section.

(3) A person shall not serve as the hearing officer of the hearing if that person has participated in:

(a) A determination of probable cause; or

(b) In another equivalent preliminary determination related to the complaint or Division of Consumer Protection action that gave rise to a hearing.

Section 7. Procedure at Hearing. A hearing shall proceed as follows:

(1) Opening statements by the:

(a) Counsel for Division of Consumer Protection or its counsel;

(b) Complainant; and

(c) Respondent.

(2) Complainant's presentation of:

(a) Testimony of complainant or witnesses; and

(b) Evidence;

(3) Division of Consumer Protection presentation of:

(a) Witnesses; and

(b) Evidence;

(4) Respondent's presentation of:

(a) Witnesses; and

(b) Evidence;

(5) Closing arguments.

(6) The hearing officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.

Section 8. Posthearing Procedure. (1) Upon completion of the hearing, within seven (7) business days after the hearing, the hearing officer shall prepare and submit to the parties;

(a) Findings of fact and conclusions of law;

(b) A recommended order; and

(2) A copy of the findings of fact, conclusions of law and recommended order, or decision if the Division of Consumer Protection has conducted the hearing, shall be mailed to all parties of record;

(3)(a) A party may file exceptions to the hearing officer's findings of fact, conclusions of law and recommended order within seven (7) days of their submission to the Division of Consumer Protection.

(b) If the hearing was conducted by the Division of Consumer Protection, a party shall file exceptions with the Division of Consumer Protection.

(4) Any party to the hearing who is aggrieved by the order may seek judicial review by filing notice of appeal in the Franklin Circuit Court within thirty (30) days after the order has been mailed or delivered to him/her. An appeal shall be handled as set forth in KRS Chapter 367(5).

Section 9. Default. Default proceeding shall be handled as set

forth in Sections 7(6) and 11 of KRS Chapter 13B which are hereby incorporated by reference.

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 30, 1994 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.
CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda Delaplane
(1) Type and number of entities affected: The only entities affected are the individuals currently registered as professional solicitors or fundraising consultants with the Division of Consumer Protection, Office of the Attorney General. That number is currently 90. Also any others who wish to begin raising funds in Kentucky on behalf of a charitable organization will also be affected but it is impossible to predict how many entities might be in that position.
(a) Direct and indirect costs or savings to those affected:
1. First year: The proposed regulation imposes no direct or indirect costs or savings to the solicitors or fundraisers during the first year, unless they file for an administrative hearing. In that event, they will have the costs associated with the hearing.
2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: For the solicitors and consultants, the new requirements will not require any additional paperwork or reporting, unless a hearing is requested. In that event, additional paperwork will be required. The additional cost is impossible to estimate.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: During the first year, there will be a direct cost as the Division of Consumer Protection will have responsibility under the regulation for conducting the due process hearing which was not previously required. This will require additional staff time. However, the new statute imposes a new fee requirement for registration which will be available for covering this additional cost.
2. Continuing costs or savings: The information in 1 above will be true for continuing years.
3. Additional factors increasing or decreasing costs: None applicable. None.
(b) Reporting and paperwork requirements: None applicable.
(3) Assessment of anticipated effect on state and local revenues: None anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to conduct due process hearings and provide the bond forms.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Not applicable to situation state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:100. Notice of requested disclosure of percentage of gross revenue going to charitable organization.

RELATES TO: KRS 367.667(3) (HB 474, §9)
STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (HB 474, §9(5)), 367.150(4)
NECESSITY AND FUNCTION: KRS Chapter 367 (HB 474, §9(5)) requires in pertinent part, upon request, the giving of the amount or percentage of funds which will be received by the charitable organization. This administrative regulation sets forth the procedure for that disclosure.

Section 1. Disclosure of information in response to a request by a person being solicited regarding the amount or percentage of funds going to the charitable organization or for a charitable or civic purpose shall be done in the following manner:
(1) Timing:
(a) The requested information shall be given immediately upon request.
(b) No further effort to solicit shall be made until the information is supplied.
(2) Form:
(a) The information disclosed shall be in clear and concise manner using words and phrases of common meaning.
(b) If the solicitation is oral, the information shall be given orally with a written statement of the same information available at no cost if the person being solicited wishes to obtain a copy.
(c) If the solicitation is written, the disclosure information shall be in written form.
(d) Any written disclosure of the amount or percentage of funds going to the charitable organization or for a charitable or civic purpose shall clearly contain the information required by KRS Chapter 367 (HB 474, §9(1), (2)).

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 30, 1994 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda R. Delaplane

(1) Type and number of entities affected: The only entities affected are the professional solicitors or fundraising consultants with the Division of Consumer Protection, Office of the Attorney General, who are requested by a member of the public who is being solicited for a contribution and requests information on the amount of funds going to the actual charity or civic organization. It would be very difficult to estimate the number but the number of registered fundraisers is currently 90.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes an extremely slight indirect cost to the professional charitable solicitor of preparing the requested information in written form for those people who wish the information in written form.

2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the solicitors and consultants, the new requirements will require an extremely slight amount of additional paperwork, that of preparing written disclosures.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no impact whatsoever upon the Attorney General's Office.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to conduct due process hearings and provide the bond forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:110. Notice of intent to solicit forms.

RELATES TO: KRS 367.657

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.657(2)

NECESSITY AND FUNCTION: To fulfill the requirement of an administrative form for those charitable organizations identified in KRS 367.657(2).

Section 1. (1) The "Notice of Intent to Solicit Form A-1" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Notice of Intent to Solicit Form A-1" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda Delaplane

(1) Type and number of entities affected: The entities affected are the professional organizations which intend to solicit contributions in Kentucky, which are required by Internal Revenue Service to file a federal Form 990, unless exempt by KRS 367.660, and which are newly formed and have not yet filed a form 990 with Internal Revenue Service.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes an extremely slight indirect cost to the charitable organization of preparing the intent to solicit form and mailing it to the Office of the Attorney General.

2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the charitable organizations, the new requirements will require an extremely slight amount of additional paperwork, that of preparing and mailing the form.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no measurable impact upon the Attorney General's Office.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to conduct due process hearings and provide the bond forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:120. Disclosure document forms.

RELATES TO: KRS Chapter 367 (HB 469, §6), 367.801, 367.805(4), 367.990(13)

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.805(4)

NECESSITY AND FUNCTION: To fulfill the requirement of an administrative form for the information set forth in KRS 367.805(4) (HB 469, §2).

Section 1. (1) The "Disclosure Document Form A-1" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Disclosure Document Form A-1" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda R. Delaplane

(1) Type and number of entities affected: The entities affected are the sellers of business opportunities. There will be no impact as they have had to furnish almost all of this information previously but to the Division of Securities, Department of Financial Institutions.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be no change in cost.

2. Continuing costs or savings: There will be no change in cost.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No change.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be some impact upon the Attorney General's Office, Division of Consumer Protection Division, to review the information obtained on the disclosure documents.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be some record keeping associated with the disclosure information as well as handling any requests from the public or other regulatory agencies which desire to review the materials.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:130. Hearings for rejection, revocation, suspension or refusal to renew registration for business opportunities.

RELATES TO: KRS 367.801, 367.805, 367.990(13), HB 469, §6

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.805(4)

NECESSITY AND FUNCTION: KRS 367.805(4) requires in pertinent part the Division of Consumer Protection to promulgate rules and regulations pertaining to the operation of business opportunities within the Commonwealth. This administrative regulation sets forth hearing and conference procedures for the permanent regulatory program including the rejection, revocation, suspension and refusal to renew registration certificates of business opportunities.

Section 1. Purpose and Construction. When the Attorney General through the Division of Consumer Protection has determined and given notice that the registration of a business opportunity shall be rejected, revoked, suspended, or refused to be renewed in accordance with KRS 367.801, any business opportunity so affected is entitled to due process. Accordingly, this administrative regulation is to be liberally constructed so as to aid in that process.

Section 2. A party may:

(1) Represent himself; or

(2) Be represented by:

(a) An authorized representative; or

(b) Counsel.

Section 3. Hearing Officer. A hearing officer shall be appointed and serve pursuant to KRS Chapter 13B (HB 334, §§3 and 4).

Section 4. Evidence. (1) Formal rules of evidence shall not apply.

(2) The hearing officer shall exclude evidence that is:

(a) Irrelevant;

(b) Immaterial;

(c) Unduly repetitious; or

(d) Excludable on:

1. Constitutional or statutory grounds; or

2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.

(3) Testimony or other evidence shall be admitted if it is:

(a) Based on facts; and

(b) Commonly relied upon by reasonably prudent persons.

(4)(a) Evidence shall not be excluded solely because it is hearsay.

(b) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing relevant evidence.

(5) The hearing officer may admit party or witness testimony taken by deposition if:

(a) A party or witness is unable to attend through no fault of his own; and

(b) The opposing party has had a full opportunity to cross-examine the party or witness.

(6) Evidence may be received in written form if it will:

(a) Expedite the hearing; and

(b) Not substantially prejudice the interest of a party.

(7)(a) A copy or an excerpt of documentary evidence may be received.

(b) Upon request, a party shall be permitted to compare the copy or excerpt with the original.

(8) Official notice shall be taken of:

(a) A fact that would be judicially noticed in the courts of the Commonwealth;

(b) The record of other proceedings before the Division of Consumer Protection;

(c) Technical or scientific matters within the specialized knowledge of the Division of Consumer Protection;

(d) Codes or standards that have been adopted by:

1. An agency of the United States, the Commonwealth, or another state; or

2. A nationally recognized organization or association, and incorporated by reference as provided by KRS Chapter 13A.

Section 5. Ex parte Communications. (1) Except as provided in this section, a hearing officer, a party, or a person with a direct or indirect interest in the outcome of a pending hearing, shall not communicate, directly or indirectly, with regard to an issue of a pending hearing with a:

(a) Party;

(b) Person who has a direct or indirect interest in the outcome of the hearing; or

(c) Person who presided at a previous stage of the hearing.

(2) Communications prohibited by the provisions of this section may be made if:

(a) Written notice is given to other parties; and

(b) Other parties are permitted to participate in the communication.

(3) A hearing officer may communicate with staff assistants, or other Division of Consumer Protection personnel, if they:

(a) Have not received ex parte communications that are prohibited to the hearing officer; and

(b) Do not furnish, augment, diminish, or modify the evidence in the record.

(4) If prior to serving as the hearing officer of a hearing, the hearing officer has received an ex parte communication that he/she is prohibited from receiving as a hearing officer, he/she shall:

(a) Place on the record of the pending hearing:

1. The written communications received;

2. The written responses to them;

3. A memorandum stating oral communications and responses; and

4. The identity of the person from whom a communication was received; and

(b) Notify and transmit copies of the items specified in subparagraph 1 of this paragraph to the parties to the hearing.

(5) Within ten (10) days of receipt of the hearing officer's notice and transmittal, a party may:

(a) Rebut the prohibited communications specified in this section; or

(b) File a motion with the Division of Consumer Protection to:

1. Disqualify the hearing officer; and

2. Seal the portions of the record pertaining to the prohibited communications.

(6) The Division of Consumer Protection shall:

(a) Report any willful violation of this section to the Attorney General or his designee for disciplinary proceedings; and

(b) Take disciplinary action authorized by statute or administrative regulation of the Division of Consumer Protection.

Section 6. Separation of Functions. (1) A person shall not serve as a hearing officer of a hearing, or assist or advise a hearing officer in a hearing, if he/she has served as an investigator, prosecutor, or advocate with regard to the subject matter of the hearing.

(2) The provisions of subsection (1) of this section shall apply to a person who is subject to the authority, direction, or discretion of persons specified in subsection (1) of this section.

(3) A person shall not serve as the hearing officer of the hearing if he/she has participated in:

(a) A determination of probable cause; or

(b) In another equivalent preliminary determination related to the complaint or Division of Consumer Protection action that gave rise to a hearing.

Section 7. Procedure at Hearing. A hearing shall proceed as follows:

(1) Opening statements by the:

(a) Counsel for Division of Consumer Protection or its counsel;

(b) Complainant; and

(c) Respondent.

(2) Complainant's presentation of:

(a) Testimony of complainant or witnesses; and

(b) Evidence.

(3) Division of Consumer Protection presentation of:

(a) Witnesses; and

(b) Evidence.

(4) Respondent's presentation of:

(a) Witnesses; and

(b) Evidence.

(5) Closing arguments.

(6) The hearing officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.

Section 8. Posthearing Procedure. (1) Upon completion of the hearing, within seven (7) business days after the hearing, the hearing officer shall prepare and submit to the parties;

(a) Findings of fact and conclusions of law;

(b) A recommended order; and

(2) A copy of the findings of fact, conclusions of law and recommended order, or decision if the Division of Consumer Protection has conducted the hearing, shall be mailed to all parties of record;

(3)(a) A party may file exceptions to the hearing officer's findings of fact, conclusions of law and recommended order within seven (7) days of their submission to the Division of Consumer Protection.

(b) If the hearing was conducted by the Division of Consumer Protection, a party shall file exceptions with the Division of Consumer Protection.

(4) Any party to the hearing who is aggrieved by the order may seek judicial review by filing notice of appeal in the Franklin Circuit Court within thirty (30) days after the order has been mailed or delivered to him/her. An appeal shall be handled as set forth in KRS Chapter 367(5).

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda R. Delaplane

(1) Type and number of entities affected: The only entities affected are the individuals currently registered as business opportunities with the Division of Consumer Protection, Office of the Attorney General. Also any others who wish to begin doing business in Kentucky as a supplier of business opportunities will also be affected but it is impossible to predict how many entities might be in that position.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes no direct or indirect costs or savings to the business opportunity sellers during the first year, unless they file for an administrative hearing. In that event, they will have the costs associated with the hearing.

2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the sellers of business opportunities, the new requirements will not require any additional paperwork or reporting, unless a hearing is requested. In that event, additional paperwork will be required. The additional cost is impossible to estimate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: During the first year, there will be a direct cost as the Division of Consumer Protection will have responsibility under the regulation for conducting the due process hearing which was not previously required. This will require additional staff time. However, the new statute imposes a new fee requirement for registration which will be available for covering this additional cost.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to conduct due process hearings and provide the bond forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:140. Prehearing procedure for rejection, revocation, suspension or refusal to renew registration for business opportunities.

RELATES TO: KRS 367.801, 367.805(4), 367.990
STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.805(4)
NECESSITY AND FUNCTION: KRS Chapter 367.805(4) requires in pertinent part the Office of the Attorney General, Division of Consumer Protection to promulgate rules and regulations pertaining to the operation of business opportunities within the Commonwealth. This administrative regulation sets forth initial procedures for a due process hearing for the rejection, revocation, suspension, or refusal to renew a registration.

Section 1. Notice of Hearing. (1) Prior to rejecting, revoking, suspending, or refusing to renew the business opportunity's registration, the Attorney General shall send by registered or certified mail written notice stating the action to be taken, the grounds for the action, and the date the hearing will be held.

(2) The notice shall be delivered to the business opportunity at his/her most recent address, as listed in the registration statement.

(3) Within seven (7) calendar days after receiving a notice that filing requirements as set forth in KRS 367.805 are not satisfied, the professional solicitor or fundraiser may request a hearing.

(4) The hearing shall be held within fourteen (14) calendar days of the Attorney General's receipt of the request for a hearing.

Section 2. Complaints and Answers. (1) A complaint shall contain a concise statement of the facts, transaction or occurrence upon which it is based.

(2) A complaint shall be notarized.

(3) Exhibits or other documents, shall be attached to the complaint.

(4) A copy of the complaint and attachments shall be served on the licensee or certificant by the hearing officer:

(a) At the last known address of the licensee or certificant;

(b) By certified mail, return receipt requested.

(5)(a) The licensee or certificant shall file with the hearing officer an answer to the complaint on "Board of Appraisers Answer Form".

(b) The answer shall be notarized.

(c) The answer shall be filed with the hearing officer within twenty (20) days after service of the complaint.

(d) A copy of the answer shall be served on complainant by the licensee or certificant by certified mail, return receipt requested to the address shown on the complaint.

Section 3. Motions, requests, filings, and other material filed with the hearing officer shall:

(1) Be served on the other party by certified mail, return receipt requested; and

(2) Contain a signed statement that service on the other party has been made.

Section 4. Witnesses. A party shall file a list of his witnesses:

(1) With the hearing officer;
(2) At least ten (10) days prior to the hearing.

Section 5. Subpoenas. (1) A party shall file a written request to the presiding officer at least twenty (20) days prior to a hearing if he/she wishes to:
(a) Subpoena a witness; or
(b) Require the production of a document.
(2) The request shall contain the:
(a) Name and address of residence and place of employment, including county, of the witness;
(b) Name of document or item, with a description sufficient to identify the document or item.

Section 6. Continuance. (1) A hearing may be continued by the presiding officer:
(a) To permit any prehearing procedures; or
(b) For other good cause.
(2) If it is necessary to continue a hearing, the presiding officer shall:
(a) Reschedule the hearing; and
(b) Notify the parties.
(3)(a) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the presiding officer at least seven (7) working days before the hearing.
(4) A motion for continuance may be filed upon the occurrence of an emergency.
(5) The hearing officer shall notify a party of his decision in writing.

Section 7. Prehearing Conference. (1) The hearing officer may schedule a prehearing conference:
(a) On his own motion; or
(b) Upon motion of a party.
(2) The hearing officer shall schedule a prehearing conference if he/she determines that it will:
(a)1. Establish stipulations;
2. Clarify issues;
3. Identify witnesses;
4. Resolve issues relating to:
a. Evidence;
b. Subpoenas;
c. Discovery; or
d. Protective orders; and
(b) Otherwise promote the orderly and prompt conduct of the hearing; or
(c) Promote settlement of the issues.
(3) If the prehearing officer schedules a prehearing conference, he/she shall notify the parties in writing:
(a) Of the date, time and place of the prehearing conference; and
(b) That they are required to attend the prehearing conference.
(4)(a) The hearing officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.
(b) A copy of the prehearing order shall be mailed to the parties.

Section 8. Discovery. (1) A request to obtain discovery shall be filed with the hearing officer.
(2) The request shall:
(a) Specify the type of discovery requested;
(b) Where applicable, describe in sufficient detail:
1. Names and addresses of persons or items;
2. Documents, other items, or places; and
(c) State the reason discovery is requested.
(3) The hearing officer may deny, limit, or require discovery.
(4) Discovery may be obtained by:
(a) Written or oral depositions;
(b) Interrogatories;
(c) Production or inspection of documents or things;
(d) Permission to photograph, or enter upon land or other property; or
(e) Physical or mental examinations.

Section 9. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to a complaint.
(2) A settlement agreement:
(a) Shall be subject to approval by the hearing officer; and
(b) If approved by the hearing officer, shall constitute:
1. A waiver of a party's right to an administrative hearing; and
2. The final order of the hearing officer.

Section 10. Motions. A motion shall be:
(1) In writing;
(2) Signed; and
(3) Filed with hearing officer.

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 30, 1994 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.
CONTACT PERSON: Wanda Delaplane, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Wanda R. Delaplane
(1) Type and number of entities affected: The only entities affected are the individuals currently registered as business opportunities with the Division of Consumer Protection, Office of the Attorney General. Also any others who wish to begin doing business in Kentucky as a supplier of business opportunities will also be affected but it is impossible to predict how many entities might be in that position.
(a) Direct and indirect costs or savings to those affected:
1. First year: The proposed regulation imposes no direct or indirect costs or savings to the business opportunity sellers during the first year, unless they file for an administrative hearing. In that event, they will have the costs associated with the hearing.
2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: For the sellers of business opportunities, the new requirements will not require any additional paperwork or reporting, unless a hearing is requested. In that event, additional paperwork will be required. The additional cost is impossible to estimate.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:

1. First year: During the first year, there will be a direct cost as the Division of Consumer Protection will have responsibility under the regulation for conducting the due process hearing which was not previously required. This will require additional staff time. However, the new statute imposes a new fee requirement for registration which will be available for covering this additional cost.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to conduct due process hearings and provide the bond forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:150. Cremation authorization forms.

RELATES TO: KRS Chapter 367 (SB 137)

STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (SB 137), 367.150(4)

NECESSITY AND FUNCTION: To fulfill the requirement for a cremation authorization form identified in KRS 367 (SB 137).

Section 1. (1) The "Cremation Authorization Form CR-1" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Cremation Authorization Form CR-1" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Schwendeman

(1) Type and number of entities affected: The only entities affected are crematory authorities and the consumers who seek to arrange for cremation of their remains. It would be very difficult to estimate the number of consumers affected, but it will likely increase as time goes on since cremation is growing in popularity. The number of crematory authorities in the Commonwealth is currently 5. It is anticipated that the number will slowly increase over the years.

(a) Direct and indirect costs or savings to those affected.

1. First year: The proposed regulation imposes a extremely slight cost to the crematory authority in having on hand and preparing cremation authorization forms for the authorizing agents.

2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the authorizing agents and the crematory authorities, the new requirements will require an extremely slight amount of additional paperwork, that of preparing the cremation authorization forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no impact whatsoever upon the Attorney General's Office.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:160. Crematory annual report form.

RELATES TO: KRS 367 (SB 137)

STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (SB 137), 367.150(4)

NECESSITY AND FUNCTION: To fulfill the requirement for a crematory annual report form identified in KRS Chapter 367 (SB 137).

Section 1. (1) The "Crematory Annual Report Form CR-2" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Crematory Annual Report Form CR-2" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort,

Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 30, 1994 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.
CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Schwendeman
(1) Type and number of entities affected: The only entities affected are crematory authorities and the consumers who seek to arrange for cremation of their remains. It would be very difficult to estimate the number of consumers affected, but it will likely increase as time goes on since cremation is growing in popularity. The number of crematory authorities in the Commonwealth is currently five. It is anticipated that the number will slowly increase over the years.
(a) Direct and indirect costs or savings to those affected.
1. First year: The proposed regulation imposes a extremely slight cost to the crematory authority in having on hand and preparing cremation authorization forms for the authorizing agents.
2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: For the authorizing agents and the crematory authorities, the new requirements will require an extremely slight amount of additional paperwork, that of preparing the cremation authorization forms.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There will be no impact whatsoever upon the Attorney General's Office.
2. Continuing costs or savings: The information in 1 above will be true for continuing years.
3. Additional factors increasing or decreasing costs: None applicable. None.
(b) Reporting and paperwork requirements: None applicable.
(3) Assessment of anticipated effect on state and local revenues: None anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:170. Preneed cremation authorization forms.

RELATES TO: KRS 367 (SB 137)
STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (SB 137), 367.150(4)
NECESSITY AND FUNCTION: To fulfill the requirement for a cremation authorization form identified in KRS Chapter 367 (SB 137).

Section 1. (1) The "Preneed Cremation Authorization Form CR-3" (July 1994 edition) is incorporated by reference.
(2) Copies of the "Preneed Cremation Authorization Form CR-3" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General
APPROVED BY AGENCY: June 13, 1994
FILED WITH LRC: June 30, 1994 at 8 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.
CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency contact: Michael Schwendeman
(1) Type and number of entities affected: The only entities affected are crematory authorities and the consumers who seek to prearrange for cremation of their remains. It would be very difficult to estimate the number of consumers affected, but it will likely increase as time goes on since cremation is growing in popularity. The number of crematory authorities in the Commonwealth is currently 5. It is anticipated that the number will slowly increase over the years.
(a) Direct and indirect costs or savings to those affected:
1. First year: The proposed regulation imposes a extremely slight cost to the crematory authority in having on hand and preparing cremation authorization forms for the authorizing agents.
2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.
3. Additional factors increasing or decreasing costs (note any

effects upon competition).

(b) Reporting and paperwork requirements: For the authorizing consumer and the crematory authorities, the new requirements will require an extremely slight amount of additional paperwork, that of preparing the cremation authorization forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no impact whatsoever upon the Attorney General's Office.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:180. Statement of training for crematory operators forms.

RELATES TO: KRS 367 (SB 137)

STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (SB 137), 367.150(4)

NECESSITY AND FUNCTION: To fulfill the requirement for a statement of training for crematory operators identified in KRS Chapter 367 (SB 137).

Section 1. (1) The "Statement of Supervision For Registered Crematory Retort Operators Form CR-4" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Statement of Supervision For Registered Crematory Retort Operators Form CR-4" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency contact: Michael Schwendeman

(1) Type and number of entities affected: The only entities affected are crematory authorities and the consumers who seek to prearrange for cremation of their remains. It would be very difficult to estimate the number of consumers affected, but it will likely increase as time goes on since cremation is growing in popularity. The number of crematory authorities in the Commonwealth is currently 5. It is anticipated that the number will slowly increase over the years.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes a extremely slight cost to the crematory authority in having on hand and preparing cremation authorization forms for the authorizing agents.

2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition).

(b) Reporting and paperwork requirements: For the authorizing consumer and the crematory authorities, the new requirements will require an extremely slight amount of additional paperwork, that of preparing the cremation authorization forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no impact whatsoever upon the Attorney General's Office.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

COMMONWEALTH OF KENTUCKY
Department of Law

40 KAR 2:190. Crematory authority license application forms.

RELATES TO: KRS 367 (SB 137)

STATUTORY AUTHORITY: KRS 15.180, Chapter 367 (SB 137), 367.150(4)

NECESSITY AND FUNCTION: To fulfill the requirement for a crematory authority license application form identified in KRS Chapter 367 (SB 137).

Section 1. (1) The "Crematory Authority License Application Form CR-5" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Crematory Authority License Application Form CR-5" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: June 30, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1994, 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 the contact person.

CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency contact: Michael Schwendeman

(1) Type and number of entities affected: The only entities affected are crematory authorities and the consumers who seek to prearrange for cremation of their remains. It would be very difficult to estimate the number of consumers affected, but it will likely increase as time goes on since cremation is growing in popularity. The number of crematory authorities in the Commonwealth is currently 5. It is anticipated that the number will slowly increase over the years.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes a extremely slight cost to the crematory authority in having on hand and preparing cremation authorization forms for the authorizing agents.

2. Continuing costs or savings: Statement from (1)(a)(1) is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition).

(b) Reporting and paperwork requirements: For the authorizing consumer and the crematory authorities, the new requirements will require an extremely slight amount of additional paperwork, that of preparing the cremation authorization forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no impact whatsoever upon the Attorney General's Office.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None.

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

DEPARTMENT OF LAW

40 KAR 2:200. Application for removal sale permit form.

RELATES TO: KRS 365.420

STATUTORY AUTHORITY: KRS 15.180, 365.420(7), 367.150(4)

NECESSITY AND FUNCTION: To fulfill the requirement for an application form to conduct a removal sale with itemization of the inventory of goods identified in KRS 365.420(7).

Section 1. (1) The "Application for Permit to Conduct a Removal Sale Form GOB-1" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Application For Permit To Conduct A Removal Sale Form GOB-1" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: July 8, 1994

FILED WITH LRC: July 8, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1994, 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 the contact person.

CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Schwendeman

(1) Type and number of entities affected: The only entities affected are County Clerks or corresponding officials in urban county governments, persons desiring to conduct removal sales under KRS 365.410 - .480, and removal sale staff at the Division of Consumer Protection, Office of the Attorney General. It would be very difficult to estimate the number of consumers affected, since the number of removal or going out of business sales varies greatly year to year. The County Clerks or the appropriate offices in urban county governments in all 120 counties of the Commonwealth are affected.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes a slight cost to the party wishing to conduct a removal sale to the extent that they must gather the information on their inventory with some particularity to report it on the form. There is no additional cost to the County Clerks.

2. Continuing costs or savings: Statement from (1)(a)1 is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the party wishing to conduct the sale, the paperwork will be slightly more extensive over the current law, than that of preparing the more detailed inventory forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no impact whatsoever upon the Attorney General's Office.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None

(b) Reporting and paperwork requirements: None applicable.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

DEPARTMENT OF LAW

40 KAR 2:210. Application for conducting more than two (2) going-out-of-business sales in four (4) years form.

RELATES TO: KRS Chapter 365 (HB 787, §4)

STATUTORY AUTHORITY: KRS 15.180, Chapter 365 (HB 787, §4), 367.150(4)

NECESSITY AND FUNCTION: To fulfill the requirement for an application form to conduct more than two (2) going-out-of-business sales in a four (4) year period identified in KRS Chapter 365 (HB 787, §4)).

Section 1. (1) The "Application for Conducting More Than Two (2) Going-out-of-business Sales in Four (4) Years Form GOB-2" (July 1994 edition) is incorporated by reference.

(2) Copies of the "Application For Conducting More Than Two (2) Going-out-of-business Sales In Four (4) Years Form GOB-2" may be inspected, copied, or obtained at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Drive, Frankfort, Kentucky 40602, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: July 8, 1994

FILED WITH LRC: July 8, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1994, 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 the contact person.

CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Schwendeman

(1) Type and number of entities affected: The only entities affected are persons desiring to conduct more than two going-out-of-business sales within a four year period under KRS 365.410-.480, and removal sale staff at the Division of Consumer Protection, Office of the Attorney General. It would be very difficult to estimate the number of persons affected, since the number of persons conducting more than two going-out-of-business sales in a four year period varies greatly year to year.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes an extremely slight cost to the party wishing to conduct a going-out-of-business sale which would exceed the two in four year limit in that they would have to fill out the required form and send it to the Division of Consumer Protection, Office of the Attorney General.

2. Continuing costs or savings: Statement from (1)(a)1 is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the party wishing to conduct the sale, the paperwork will be slightly more extensive over the current law, than that of filling out an application for an exception to the two going-out-of-business sales in four years limit.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small impact upon the Attorney General's Office. It is not anticipated that very many such applications will be received. The fee paid for the application should defer all costs incurred in the investigation.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None

(b) Reporting and paperwork requirements: Receipt of the application will initiate an investigation to determine if the request is justified within the meaning of KRS Chapter 365 (HB 787, §4).

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

DEPARTMENT OF LAW

40 KAR 2:220. Application procedure for obtaining going-out-of-business sale permits in excess of two (2) sales in a four (4) year period.

RELATES TO KRS Chapter 365 (HB 787, §4)

STATUTORY AUTHORITY: KRS 15.180, Chapter 365 (HB 787, §4), 367.150(4)

NECESSITY AND FUNCTION: KRS Chapter 365 (HB 787, §4) requires in pertinent part the Office of the Attorney General to promulgate administrative regulations pertaining to applications by any party for more than two (2) going-out-of-business sale permits during a four (4) year period. This administrative regulation sets forth the procedures for applying for a subsequent permit, the investigation to be initiated and conducted by the Attorney General, and charges to the applicant, pursuant to KRS Chapter 365 (HB 787, §4).

Section 1. Application Procedure for Excess Permits. When any individual, partnership, corporation or other firm seeks a permit to conduct more than two (2) going-out-of-business sales within a four (4) year period, such party shall obtain, complete, and submit to the Office of the Attorney General, Division of Consumer Protection, an application form to obtain such permit.

Section 2. Investigation to Determine Legitimate Business Purpose. (1) Upon receipt of such application, the Office of the Attorney General, Division of Consumer Protection, shall initiate and conduct an investigation to determine if there is a legitimate business reason to conduct more than two (2) going-out-of-business sales within a four (4) year period. The Division of Consumer Protection shall investigate the circumstances of all previous going-out-of-business sales conducted by the applicant within the previous four (4) years and consider all relevant information in reaching its decision. The Attorney General may request additional information and relevant business records from the applicant in determining the legitimacy of the business reason for the application.

(2) The Attorney General shall determine if there is a legitimate business reason for the applicant's request for any excess permits and deny or grant the permit within thirty (30) days of receiving the application.

Section 3. The Applicant May be Charged the Costs of the Investigation. The Attorney General may charge the applicant for the costs of the investigation. The actual costs shall be assessed the applicant by the Attorney General, however the minimum charge shall be twenty-five (25) dollars, and the maximum charge $250.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: July 8, 1994

FILED WITH LRC: July 8, 1994 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1994, 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 the contact person.

CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Schwendeman

(1) Type and number of entities affected: The only entities affected are parties desiring to conduct more than two going-out-of-business sales within a four year period under KRS 365.410-.480, and removal sale staff at the Division of Consumer Protection, Office of the Attorney General. It would be very difficult to estimate the number of parties affected, since the number of persons conducting more than two going-out-of-business sales in a four year period varies greatly year to year.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes an extremely slight cost to the party wishing to conduct a going-out-of-business sale which would exceed the two in four year limit if the application is approved. All applicants would have to fill out the required form and send it to the Division of Consumer Protection, Office of the Attorney General. Significant additional costs may ensue if the application is denied, and the applicant chooses to appeal the denial by requesting a hearing, and possible subsequent appeal to the Franklin Circuit Court.

2. Continuing costs or savings: Statement from (1)(a)1 is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the party wishing to conduct the sale, the paperwork will be slightly more extensive over the current law, than that of filling out an application for an exception to the two going-out-of-business sales in four years limit.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a variable impact upon the Attorney General's Office. It is not anticipated that very many such applications will be received. The charge for the investigation should cover all costs incurred in the investigation. Some additional expenses would be incurred if an applicant requests a hearing after having an application denied, and possible subsequent hearing in Franklin Circuit Court.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None

(b) Reporting and paperwork requirements: Receipt of the application will initiate an investigation to determine if the request is justified within the meaning of KRS Chapter 365 (HB 787, §4). A report to the applicant on the outcome of the investigation will be required.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

DEPARTMENT OF LAW

40 KAR 2:230. Prehearing procedure for rejection of application for more than two (2) going-out-of-business sales during a four (4) year period.

RELATES TO: KRS Chapter 365 (HB 787, §4)

STATUTORY AUTHORITY: KRS 15.180, Chapter 365 (HB 787, §4), 367.150(4)

NECESSITY AND FUNCTION: KRS Chapter 365 (HB 787, §4) requires in pertinent part the Office of the Attorney General, Division of Consumer Protection, to promulgate administrative regulations pertaining to applications by any party for more than two (2) going-out-of-business sale permits during a four (4) year period. This administrative regulation sets forth initial procedures for a due process hearing for the appeal by the applicant of a denial of an application for a permit to conduct more than two (2) going-out-of-business sales in a four (4) year period pursuant to KRS Chapter 365 (HB 787, §4).

Section 1. Notice of Denial and Request for a Hearing. (1) Upon denial of the applicant's request for a permit to conduct a subsequent sale in excess of two (2) going-out-of-business sales in a four (4) year period, the Attorney General shall send by registered or certified mail written notice stating that the application has been denied. The grounds for the denial shall be set forth in the notice.

(2) Within seven (7) calendar days after receiving the notice of denial of the application for a subsequent permit after having conducted two (2) going-out-of-business sales within a four (4) year period, the applicant may request a hearing. The request shall be made to the Attorney General, Division of Consumer Protection.

(3) The hearing shall be held within thirty (30) calendar days of the Attorney General's receipt of the request for a hearing.

Section 2. Motions, requests, filings, and other material filed with the hearing officer shall:

(1) Be served on the other party by certified mail, return receipt requested; and

(2) Contain a signed statement that service on the other party has been made.

Section 3. Witnesses. A party shall file a list of his witnesses:

(1) With the hearing officer;

(2) At least ten (10) days prior to the hearing.

Section 4. Subpoenas. (1) A party shall file a written request to the hearing officer at least twenty (20) days prior to a hearing if he/she wishes to:

(a) Subpoena a witness; or

(b) Require the production of a document.

(2) The request shall contain the:

(a) Name and address of residence and place of employment, including county, of the witness;

(b) Name the document or item, with a description sufficient to identify the document or item.

Section 5. Continuance. (1) A hearing may be continued by the hearing officer:

(a) To permit any prehearing procedures; or

(b) For other good cause.

(2) If it is necessary to continue a hearing, the hearing officer shall:

(a) Reschedule the hearing; and

(b) Notify the parties.

(3) Except as provided by subsection (4) of this section, a motion for continuance shall be filed with the hearing officer at least seven (7) working days before the hearing.

(4) A motion for continuance may be filed upon the occurrence of an emergency.

(5) The hearing officer shall notify a party of his decision in writing.

Section 6. Prehearing Conference. (1) The hearing officer may schedule a prehearing conference:

(a) On his own motion; or

(b) Upon motion of a party.

(2) The hearing officer shall schedule a prehearing conference if he/she determines that it will:

(a)1. Establish stipulations;

2. Clarify issues;

3. Identify witnesses;

4. Resolve issues relating to:

a. Evidence;

b. Subpoenas;

c. Discovery; or

d. Protective orders; and

(b) Otherwise promote the orderly and prompt conduct of the hearing; or

(c) Promote settlement of the issues.

(3) If the hearing officer schedules a prehearing conference, he/she shall notify the parties in writing:

(a) Of the date, time and place of the prehearing conference; and

(b) That they are required to attend the prehearing conference.

(4)(a) The hearing officer shall issue a prehearing order that incorporates matters determined at the prehearing conference.

(b) A copy of the prehearing order shall be mailed to the parties.

Section 7. Discovery. (1) A request to obtain discovery shall be filed with the hearing officer.

(2) The request shall:

(a) Specify the type of discovery requested;

(b) Where applicable, describe in sufficient detail:

1. Names and addresses of persons or items;

2. Documents, other items, or places; and

(c) State the reason discovery is requested.

(3) Discovery may be obtained by:

(a) Written or oral depositions;

(b) Interrogatories;

(c) Production or inspection of documents or things;

(d) Permission to photograph, or enter upon land or other property; or

(e) Physical or mental examinations.

Section 8. Settlement Agreement. (1) The parties may agree to a settlement of the issues that gave rise to the denial of the application.

(2) A settlement agreement:

(a) Shall be subject to approval by the hearing officer; and

(b) If approved by the hearing officer, shall constitute:

1. A waiver of a party's right to an administrative hearing; and

2. The final order of the hearing officer.

Section 9. Motions. A motion shall be:

(1) In writing;

(2) Signed; and

(3) Filed with the hearing officer.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: July 8, 1994

FILED WITH LRC: July 8, 1994 at 2 p.m.

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CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Schwendeman

(1) Type and number of entities affected: The only entities affected are parties desiring to conduct more than two going-out-of-business sales within a four year period under KRS 365.410-.480, and removal sale staff at the Division of Consumer Protection, Office of the Attorney General. It would be very difficult to estimate the number of parties affected, since the number of persons conducting more than two going-out-of-business sales in a four year period varies greatly year to year.

(a) Direct and indirect costs or savings to those affected:

1. First year: The proposed regulation imposes an extremely slight cost to the party wishing to conduct a going-out-of-business sale which would exceed the two in four year limit if the application is approved. All applicants would have to fill out the required form and send it to the Division of Consumer Protection, Office of the Attorney General. Significant additional costs may ensue if the application is denied, and the applicant chooses to appeal the denial by requesting a hearing, and possible subsequent appeal to the Franklin Circuit Court.

2. Continuing costs or savings: Statement from (1)(a)1 is true for the continuing years.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: For the party wishing to conduct the sale, the paperwork will be slightly more extensive over the current law, than that of filling out an application for an exception to the two going-out-of-business sales in four years limit. If the party requests a hearing after a denial of the application, additional paperwork will be required. The additional cost is impossible to estimate.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a variable impact upon the Attorney General's Office. It is not anticipated that very many such applications will be received. The charge for the investigation should cover all costs incurred in the investigation. Some additional expenses would be incurred if an applicant requests a hearing after having an application denied, and possible subsequent hearing in Franklin Circuit Court.

2. Continuing costs or savings: The information in 1 above will be true for continuing years.

3. Additional factors increasing or decreasing costs: None applicable. None

(b) Reporting and paperwork requirements: Receipt of the application will initiate an investigation to determine if the request is justified within the meaning of KRS Chapter 365 (HB 787, §4). A report to the applicant on the outcome of the investigation will be required. Paperwork requirements will increase to an unpredictable level if rejected applicants request hearings or appeal to Franklin Circuit Court.

(3) Assessment of anticipated effect on state and local revenues: None anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

DEPARTMENT OF LAW

40 KAR 2:240. Hearings for denial of application for more than two (2) going-out-of-business sales during a four (4) year period.

RELATES TO: KRS Chapter 365 (HB 787, §4)

STATUTORY AUTHORITY: KRS 15.180, Chapter 365 (HB 787, §4), 367.150(4)

NECESSITY AND FUNCTION: KRS Chapter 365 (HB 787, §4) requires in pertinent part the Attorney General, Division of Consumer Protection to promulgate rules and administative regulations pertaining to applications by any party for a permit to conduct a going-out-of-business sale subsequent to two (2) previous going-out-of-business sales within a four (4) year period. This administrative regulation sets forth hearing and conference procedures for the appeal by the applicant of a denial of a subsequent permit by the Attorney General, pursuant to KRS Chapter 365 (HB 787, §4).

Section 1. Purpose and Construction. When the Attorney General through the Division of Consumer Protection has determined and given notice that a request for approval of a permit to conduct a going-out-of-business sale subsequent to two (2) previous going-out-of-business sales in a four (4) year period has been denied in accordance with KRS Chapter 365 (HB 787, §4), any applicant so affected is entitled to due process. Accordingly, this regulation is to be liberally constructed so as to aid in that process.

Section 2. A party may:
(1) Represent himself; or
(2) Be represented by:
(a) An authorized representative; or
(b) Counsel.

Section 3. Hearing Officer. A hearing officer shall be appointed and serve pursuant to KRS Chapter 13B (HB 334, §§3 and 4).

Section 4. Evidence. (1) Formal rules of evidence shall not apply.
(2) The hearing officer shall exclude evidence that is:
(a) Irrelevant;
(b) Immaterial;
(c) Unduly repetitious; or
(d) Excludable on:
1. Constitutional or statutory grounds; or

2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.

(3) Testimony or other evidence shall be admitted if it is:

(a) Based on facts; and

(b) Commonly relied upon by reasonably prudent persons.

(4) Hearsay evidence.

(a) Evidence shall not be excluded solely because it is hearsay.

(b) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing relevant evidence.

(5) The hearing officer may admit party or witness testimony taken by deposition if:

(a) A party or witness is unable to attend through no fault of his own; and

(b) The opposing party has had a full opportunity to cross-examine the party or witness.

(6) Evidence may be received in written form if it will:

(a) Expedite the hearing; and

(b) Not substantially prejudice the interest of a party.

(7) Copies and excerpts.

(a) A copy or an excerpt of documentary evidence may be received.

(b) Upon request, a party shall be permitted to compare the copy or excerpt with the original.

(8) Official notice shall be taken of:

(a) A fact that would be judicially noticed in the courts of the Commonwealth;

(b) The record of other proceedings before the Division of Consumer Protection;

(c) Technical or scientific matters within the specialized knowledge of the Division of Consumer Protection;

(d) Codes or standards that have been adopted by:

1. An agency of the United States, the Commonwealth, or another state; or

2. A nationally recognized organization or association, and incorporated by reference as provided by KRS Chapter 13A.

Section 5. Ex parte Communications. (1) Except as provided in this section, a hearing officer, a party, or a person with a direct or indirect interest in the outcome of a pending hearing, shall not communicate, directly or indirectly, with regard to an issue of a pending hearing with a:

(a) Party;

(b) Person who has a direct or indirect interest in the outcome of the hearing; or

(c) Person who presided at a previous stage of the hearing.

(2) Communications prohibited by the provisions of this section may be made if:

(a) Written notice is given to other parties; and

(b) Other parties are permitted to participate in the communication.

(3) A hearing officer may communicate with staff assistants, or other Division of Consumer Protection personnel, if they:

(a) Have not received ex parte communications that are prohibited to the hearing officer; and

(b) Do not furnish, augment, diminish, or modify the evidence in the record.

(4) If prior to serving as the hearing officer of a hearing, the hearing officer has received an ex parte communication that he/she is prohibited from receiving as a hearing officer, he/she shall:

(a) Place on the record of the pending hearing:

1. The written communications received;

2. The written responses to them;

3. A memorandum stating oral communications and responses; and

4. The identity of the person from whom a communication was received; and

(b) Notify and transmit copies of the items specified in subparagraph 1 of this paragraph to the parties to the hearing.

(5) Within ten (10) days of receipt of the hearing officer's notice and transmittal, a party may:

(a) Rebut the prohibited communications specified in this section; or

(b) File a motion with the Division of Consumer Protection to:

1. Disqualify the hearing officer; and

2. Seal the portions of the record pertaining to the prohibited communications.

(6) The Division of Consumer Protection shall:

(a) Report any willful violation of this section to the Attorney General or his designee for disciplinary proceedings; and

(b) Take disciplinary action authorized by statute or administrative regulation of the Division of Consumer Protection.

Section 6. Separation of Functions. (1) A person shall not serve as a hearing officer of a hearing, or assist or advise a hearing officer in a hearing, if he/she has served as an investigator, prosecutor, or advocate with regard to the subject matter of the hearing.

(2) The provisions of subsection (1) of this section shall apply to a person who is subject to the authority, direction, or discretion of persons specified in subsection (1) of this section.

(3) A person shall not serve as the hearing officer of the hearing if he/she has participated in:

(a) A determination of the legitimacy of the business purpose of the proposed subsequent sale; or

(b) In another equivalent preliminary determination related to the application or Division of Consumer Protection action that gave rise to a hearing.

Section 7. Procedure at Hearing. A hearing shall proceed as follows:

(1) Opening statements by the:

(a) Counsel for applicant; and

(b) Counsel for Division of Consumer Protection.

(2) Applicant's presentation of:

(a) Testimony of applicant or witnesses; and

(b) Evidence;

(3) Division of Consumer Protection's presentation of:

(a) Witnesses; and

(b) Evidence.

(4) Closing arguments.

(5) The hearing officer may require parties to submit legal memoranda in lieu of opening statements or closing arguments.

Section 8. Posthearing Procedure. (1) Upon completion of the hearing, within seven (7) business days after the hearing, the hearing officer shall prepare and submit to the parties;

(a) Findings of fact and conclusions of law;

(b) A recommended order; and

(2) A copy of the findings of fact, conclusions of law and recommended order, or decision if the Division of Consumer Protection has conducted the hearing, shall be mailed to all parties of record;

(3) Filing exceptions.

(a) A party may file exceptions to the hearing officer's findings of fact, conclusions of law and recommended order within seven (7) days of their submission to the Division of Consumer Protection.

(b) If the hearing was conducted by the Division of Consumer Protection, a party shall file exceptions with the Division of Consumer Protection.

(4) Any party to the hearing who is aggrieved by the order may seek judicial review by filing notice of appeal in the Franklin Circuit Court within thirty (30) days after the order has been mailed or delivered to him/her.

BRENT L. CALDWELL, Deputy Attorney General

APPROVED BY AGENCY: July 8, 1994
FILED WITH LRC: July 8, 1994 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1994, at 9 a.m. at Office of Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1994, 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 the contact person.
CONTACT PERSON: Michael Schwendeman, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, P.O. Box 2000, Frankfort, Kentucky 40602-2000, (502) 573-2200.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Schwendeman
(1) Type and number of entities affected: The only entities affected are parties desiring to conduct more than two going-out-of-business sales within a four year period under KRS 365.410-.480, and removal sale staff at the Division of Consumer Protection, Office of the Attorney General. It would be very difficult to estimate the number of parties affected, since the number of persons conducting more than two going-out-of-business sales in a four year period varies greatly year to year.
(a) Direct and indirect costs or savings to those affected:
1. First year: The proposed regulation imposes an extremely slight cost to the party wishing to conduct a going-out-of-business sale which would exceed the two in four year limit if the application is approved. All applicants would have to fill out the required form and send it to the Division of Consumer Protection, Office of the Attorney General. Significant additional costs may ensue if the application is denied, and the applicant chooses to appeal the denial by requesting a hearing, and possible subsequent appeal to the Franklin Circuit Court.
2. Continuing costs or savings: Statement from (1)(a)1 is true for the continuing years.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: For the party wishing to conduct the sale, the paperwork will be slightly more extensive over the current law, than that of filling out an application for an exception to the two going-out-of-business sales in four years limit. If the party requests a hearing after a denial of the application, additional paperwork will be required. The additional cost is impossible to estimate.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There will be a variable impact upon the Attorney General's Office. It is not anticipated that very many such applications will be received. Some additional expenses would be incurred if an applicant requests a hearing after having an application denied, and possible subsequent hearing in Franklin Circuit Court.
2. Continuing costs or savings: The information in 1 above will be true for continuing years.
3. Additional factors increasing or decreasing costs: None applicable. None
(b) Reporting and paperwork requirements: Receipt of the application will initiate an investigation to determine if the request is justified within the meaning of KRS Chapter 365 (HB 787, §4). A report to the applicant on the outcome of the investigation will be required. Paperwork requirements will increase to an unpredictable level if rejected applicants request hearings or appeal to Franklin Circuit Court.
(3) Assessment of anticipated effect on state and local revenues: None anticipated.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute to provide authorization forms.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Not applicable to situation as state statute requires uniformity.

PERSONNEL BOARD

101 KAR 1:366. Standard of proof in disability discrimination cases.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095, 18A.140
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
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 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. The Americans with Disabilities Act, 42 USC Section 1210 et. seq. applies to state governments. KRS 18A.140 prohibits discrimination against employees on the basis of disability. Although the Personnel Board does not enforce federal law as such, the powers delegated to the Personnel Board by the General Assembly require certain findings of fact in disability discrimination appeals consistent with the requirements of the Americans with Disabilities Act.

Section 1. Definitions. (1) "Reasonable accommodation" means a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for an individual with a disability to enjoy an equal opportunity in employment.
(2) "Undue burden" means an action that requires significant difficulty or expense in relation to the size, resource availability, and the nature of the administrative body's mission.

Section 2. Hearing Officer's Findings. (1) If an employee alleges that he or she has been discriminated against on the basis of a disability, the board's hearing officer, or the board member hearing the case, shall, among other findings of fact, include the following:
(a) Whether the employee requested a reasonable accommodation from the appointing authority, by informing the appointing authority through his immediate supervisor, that an adjustment or change was necessary to perform his job duties because of limitations resulting from his disability.
(b) Whether the appointing authority requested documentation of the employee's functional limitations to support the request.
(c) If the request was made, whether or not the employee provided the information requested.
(d) Whether the appointing authority made a reasonable effort to provide an effective accommodation for the employee.
(e) If there are one (1) or more effective accommodations that

would provide an equal employment opportunity, whether the appointing authority considered the preference of the employee with the disability and selected the accommodation that would best serve the needs of the employee and the employing agency.

(2) The determination of whether a particular accommodation will impose an undue burden must be on a case-by-base basis.

TERRI KING SCHOBORG, Chairperson

APPROVED BY AGENCY: July 8, 1994

FILED WITH LRC: July 14, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 1994, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1994, five days prior to the scheduled hearing, 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: R. Hanson Williams, Executive, Director, Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, (502) 564-7830.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hanson Williams

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (Note any effects upon competition):

(b) Reporting and paperwork requirements: Minimal

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. This regulation must apply to all classified employees and all state agencies with classified employees. Further tiering has not been utilized in the administrative regulations of the Personnel Board in that the board is a quasi-judicial body and as such has no latitude not granted by statute to utilize tiering methods outlined in KRS 13A.210.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The rules concerning standards for the establishment and maintenance of a merit system for state governmental units receiving federal grants in aid were issued by the Office of Personnel Management and became effective on February 9, 1979. These rules were revised April 4, 1983, and are now codified as 5 CFR, Part 900, Subpart F, Sections 900.601-900.606, (48 FR 9209, March 4, 1983).

2. State compliance standards. The purpose of this regulation is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to federally required merit personnel systems in state agencies. Certain federal grant programs require, as a condition of eligibility, that state agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific federal grant statutes and in other cases are required by regulations of the federal grantor agencies.

3. Minimum or uniform standards contained in the federal mandate. The standards required for a merit system of personnel administration include such merit principles as:

(a) Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The provisions of the federal merit standards recognize fully the rights, powers and responsibility of state government and encourages innovation and allows for diversity in the design, execution and management of the system of personnel management, as provided by the Intergovernmental Personnel Act of 1970 if standards have certain specific requirements and options. The requirements and options have been exercised by the General Assembly in the enactment of KRS Chapter 18A and its delegation of duties and responsibilities to the State Personnel Board and the Department of Personnel.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This regulation to our knowledge is not stricter than the federal mandate.

FINANCE AND ADMINISTRATION CABINET

200 KAR 5:021. Manual of Policies and Procedures.

RELATES TO: KRS Chapter 45A

STATUTORY AUTHORITY: KRS 45A.045(2)

NECESSITY AND FUNCTION: The Finance and Administration Cabinet is required by KRS 45A.045(2) to promulgate administrative regulations to govern purchasing by various state agencies, and to publish a manual of policies and procedures, which is to be incorporated by reference as an administrative regulation pursuant to KRS Chapter 13A. This administrative regulation implements the requirement that this manual be incorporated by reference as an administrative regulation. This administrative regulation repeals 200 KAR 5:020,

Finance and Administrative Cabinet Manual of Policies and Procedures, which is a previous version of the manual incorporated by reference in this administrative regulation.

Section 1. The purchasing policies and procedures of the "Finance and Administration Cabinet Manual of Policies and Procedures (1994)", is hereby adopted and incorporated by reference, the same as if set forth at length, in and as a part of the administrative regulations of the Finance and Administrative Cabinet adopted pursuant to KRS Chapter 45A. The "Finance and Administration Cabinet Manual of Policies and Procedures (1994)" shall be available for public inspection and copying Monday through Friday, excluding state holidays, from 8 a.m. to 4:30 p.m. at the Office of Management and Budget, Finance and Administrative Cabinet, Capitol Annex, Frankfort, Kentucky.

Section 2. 200 KAR 5:020, Finance and Administration Cabinet Manual of Policies and Procedures, is hereby repealed.

W. PATRICK MULLOY, II, Secretary
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 14, 1994 at 1 p.m.
PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on August 30, 1994, at 10 a.m., at Room 383, Finance and Administration Cabinet, Conference Room, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 25, 1994, five calendar 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 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: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Room 374, Capitol Annex Building, Frankfort, Kentucky 40601, (502) 564-6660.

REGULATORY IMPACT ANALYSIS

Contact person: Warren O. Nash
(1) Type and number of entities affected: All state agencies within the executive branch of state government will be affected by the Finance and Administration Cabinet's Manual of Policies and Procedures.
(a) Direct and indirect costs or savings to those affected: There will be no direct or indirect costs or savings to those state agencies affected by this regulation.
1. First year: Same as above.
2. Continuing costs or savings: Same as above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The incorporation of the Finance and Administration Cabinet Manual of Policies and Procedures as an administrative regulation will not change state agencies' current reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: The incorporation of the Finance and Administration Cabinet manual of Policies and Procedures will have a minimal effect on the promulgating agency.
(a) Direct and indirect costs or savings: This regulation will have no effect on savings for the Finance and Administration Cabinet. The costs to the Finance and Administration Cabinet will be minimal. The only costs incurred by the Finance and Administration Cabinet will be those costs resulting from publishing a revised manual and distribution of the same to all state agencies.
1. First year: Same as above.
2. Continuing costs or savings: The only continuing costs, which will be incurred by the Finance and Administration Cabinet, are those costs resulting from publishing revisions to the manual and distribution of the same to all state agencies.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: There will be no increase in reporting or paperwork requirements of the Finance and Administration Cabinet as a result of incorporating its Manual of Policies and Procedures as an administrative regulation.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The Finance and Administration Cabinet is required under KRS 45A.045(2) to publish a manual of policies and procedures and to incorporate the same as an administrative regulation pursuant to KRS Chapter 13A. Therefore, no other alternative methods are available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 200 KAR 5:021, does not conflict with, overlap, or duplicate any other statute, administrative regulation, or government policy.
(a) Necessity of proposed administrative regulation if in conflict: See above.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above.
(6) Any additional information or comments: None
TIERING: Is tiering applied? Yes. This regulation was narrowly tailored to apply only to state agencies in the executive branch of state government.

FINANCE AND ADMINISTRATION CABINET

200 KAR 20:010. Health insurance coverage for nonstate employees.

RELATES TO: 1994 Ky. Acts ch. 512, §93
STATUTORY AUTHORITY: 1994 Ky. Acts ch. 512, §93
NECESSITY AND FUNCTION: The provisions of the 1994 Ky. Acts ch. 512, §93, require the Secretary of the Finance and Administration Cabinet and the Secretary of the Cabinet for Human Resources to provide a system to enroll any citizen who elects to purchase health insurance coverage pursuant to provisions of the Act. This legislation also requires that the Finance and Administration Cabinet promulgate an administrative regulation which establishes the manner in which the premiums for health insurance coverage shall be paid.

Section 1. Enrollment for Health Insurance Coverage. (1) The provisions of the 1994 Ky. Acts ch. 512, §93, provide that any citizen of the United States, who has been a Kentucky resident for the previous one (1) year period, may elect to purchase health insurance coverage as provided to state employees pursuant to KRS 18A.225 and 18A.2281. In order to purchase this health insurance coverage, an individual shall obtain a "Request for Application for Health Insurance Coverage Form" from a county field office of the Cabinet for Human Resources located in the county of the citizen's residence, or at other locations designated by the Cabinet for Human Resources, and deliver it directly to the Kentucky Department of Personnel.
(2) Upon receipt of the "Request for Application of Health Insurance Coverage Form," the Department of Personnel shall mail to the applicant a "Commonwealth of Ky. Application." This application shall be filled out completely by the individual desiring to purchase health insurance coverage, and delivered to the Kentucky Department of Personnel, along with the applicant's annual or first

quarterly premium for the health insurance coverage as established by the Kentucky Department of Personnel. The applicant's premium shall be paid in the manner established in Section 2 of this administrative regulation.

Section 2. Payment of Premiums. (1) An applicant for health insurance coverage provided for under the provisions of the 1994 Ky. Acts ch. 512, shall pay, in advance on an annual or quarterly basis, the premium charged for this coverage as established by the Kentucky Department of Personnel.

(2)(a) If an applicant elects to pay the premium for health insurance coverage on a quarterly basis, then the applicant's advance quarterly premium shall be paid in its entirety at the time of filing of the Department of Personnel's "Commonwealth of Ky. Application."

(b) The applicant's quarterly premium may be paid in monthly installments, with the first two (2) monthly installments of the quarterly premium to be paid when the applicant's "Commonwealth of Ky. Application" is filed with the Kentucky Department of Personnel. Depending on whether the applicant has elected to purchase the health insurance coverage provided by KRS 18A.2281 or 18A.225, the applicant's last monthly installment of the quarterly premium shall be postmarked or received either by the Department of Personnel or the commercial health insurance carrier by the tenth day of the month preceding the month the health insurance coverage is to take effect.

(c) Subsequent quarterly payments shall be paid in monthly installments and postmarked or received either by the Department of Personnel or the commercial health insurance carrier by the tenth day of each month starting with the first month the health insurance is effective.

(d) The last monthly installment for any quarter shall be postmarked or received either by the Department of Personnel for insurance purchased under KRS 18A.2281 or the commercial health insurance carrier, for insurance purchased under KRS 18A.2281 by the tenth day of the month preceding the first month of any quarter of health insurance coverage.

(3) The applicant's payment of premiums for health insurance provided by KRS 18A.2281, shall be made by cashier's or certified check, or by money order made payable to the Kentucky State Treasurer and delivered to the Kentucky Department of Personnel, who shall deposit these funds into the Kentucky Kare Insurance Trust Fund authorized by KRS 18A.2281.

(4) The applicant's initial payment of insurance premium or installments for commercial health insurance provided for under KRS 18A.225, shall be made by cashier's or certified check, or by money order made payable to the commercial health insurance company chosen by the applicant and delivered to the Kentucky Department of Personnel, who shall forward said payment to the health insurance company with a copy of the "Commonwealth of Ky. Application." Subsequent quarterly payments or premium installments shall be paid directly from the applicant to the commercial health insurance company.

(5) If an applicant fails to comply with the provisions of this section, then the applicant's coverage shall not go into effect, or if already in effect, the applicant's insurance coverage shall be cancelled, at which time the installments previously paid by the applicant shall be reimbursed to the applicant within thirty (30) working days.

(6)(a) Except as provided in paragraph (b) of this subsection, the initial health insurance coverage provided by the 1994 Ky. Acts ch. 512, §93, shall not be effective until the first day of the second calendar month following the Kentucky Department of Personnel's receipt of the applicant's payment of the entire annual or quarterly premium.

(b) If the applicant elects to pay the quarterly premium on an installment basis, then the applicant's health insurance coverage shall be effective the first day of the second calendar month following the Department of Personnel's or the commercial health insurance carrier's receipt of payment of the first two (2) months installment of the quarterly premium, provided the final installment of the quarterly premium is received within the time established under Section 2(2)(d) of this administrative regulation.

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

(a) Kentucky Department of Personnel "Request for Application for Health Insurance" (1994);

(b) Kentucky Department of Personnel "Commonwealth of Ky. Application" (1994).

(2) This material may be inspected, obtained, or copied at the Kentucky Department of Personnel, 200 Fair Oaks Lane, Suite 511, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., E.D.T., Monday through Friday.

W. PATRICK MULLOY, II, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 1 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on August 26, 1994, at 10 a.m., E.D.T. at the Health Services Auditorium, CHR Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1994, five calendar 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 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: Warren O. Nash, III, Attorney, Finance and Administration Cabinet, Office of Legal and Legislative Services, Frankfort, Kentucky 40601, (502) 564-6660.

REGULATORY IMPACT ANALYSIS

Contact person: Warren O. Nash

(1) Type and number of entities affected: Undeterminable at this time.

(a) Direct and indirect costs or savings to those affected: Undeterminable at this time.

1. First year: Undeterminable at this time.

2. Continuing costs or savings: Undeterminable at this time.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Undeterminable at this time.

(b) Reporting and paperwork requirements: There will be an increase in the administrative paperwork for the Department of Personnel due to the processing of applications for coverage and payment of premiums from nonstate employees to the Department of Personnel and participating commercial insurance companies.

(2) Effects on the promulgating administrative body: This regulation will have minimal effect on the Finance and Administration Cabinet.

(a) Direct and indirect costs or savings: Minimal to the Finance and Administration Cabinet.

1. First year: Minimal to the Finance and Administration Cabinet.

2. Continuing costs or savings: Minimal costs to Finance and Administration Cabinet.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements for the Finance and Administration Cabinet.

(3) Assessment of anticipated effect on state and local revenues: Unable to determine at this time.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative measures were used because the 1994 Ky. Acts ch. 512, §93, requires the Finance and Administration Cabinet to promulgate this regulation in order to implement the buy-in insurance program.

(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: 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: N/A

TIERING: Is tiering applied? Yes. This regulation has been narrowly tailored to affect only those nonstate employees who are eligible to purchase health insurance coverage under 1994 Ky. Acts ch. 512, §93.

GENERAL GOVERNMENT CABINET
Kentucky Board of Ophthalmic Dispensers

201 KAR 13:055. Continuing education requirements.

RELATES TO: KRS 326.020, 326.080

STATUTORY AUTHORITY: KRS 326.020(3)

NECESSITY AND FUNCTION: To establish a continuing education program for ophthalmic dispenser licensees and apprentice ophthalmic dispenser licensees; to set forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. "Continuing education hour" means fifty (50) contact minutes of participating in continuing education experiences.

Section 2. Each ophthalmic dispenser licensee shall be required to complete a minimum of six (6) continuing education hours in order to renew his license each year. Each apprentice ophthalmic dispenser licensee shall be required to complete a minimum of four (4) continuing education hours in order to renew his license each year. Continuing education hours in excess of the number required at the time of renewal of license may not be applied to future requirements.

Section 3. A minimum of three (3) of the required six (6) continuing education hours for renewal of ophthalmic dispenser licensure and a minimum of two (2) of the required four (4) continuing education hours for renewal of apprentice ophthalmic dispenser licensure shall be obtained through programs sponsored by entities listed in Section 4(1) of this administrative regulation. The remaining continuing education hours may be obtained through any of the sources listed in Section 4 of this administrative regulation.

Section 4. Continuing education hours applicable to renewal of licensure shall be directly related to the professional growth and development of ophthalmic dispensers. They may be earned by completing any of the following educational activities:

(1) Relevant offerings provided by the following organizations or institutions that have been reviewed and approved by the board:

(a) The Society of Dispensing Opticians of Kentucky;

(b) The Opticians Association of America, or any of its affiliated state chapters;

(c) The Contact Lens Society of America, or any of its affiliated state chapters;

(d) The National Academy of Opticianary, or any of its affiliated state chapters;

(e) The American Optometric Association, or any of its affiliated state chapters;

(f) The American Academy of Ophthalmology, or any of its affiliated state chapters; or

(g) The Southeastern Society of Dispensing Opticians.

(2) Relevant offerings of the following types that have been reviewed and approved by the board: accredited schools' continuing education programs.

(3) Related areas not specifically a part of the field of ophthalmic dispensing 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 5. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.

(1) Programs shall be submitted to the board for review and approval at least sixty (60) days prior to planned participation so the participants can know the value of such an experience prior to actual participation.

(2) 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.

(3) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(4) Sponsors shall maintain for three (3) years records of the names of those participants who complete a program.

Section 6. Sponsors and licensees requesting approval of continuing education for ophthalmic dispensers shall submit an application containing such information as the board may require on forms provided by the board.

Section 7. 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 326.

Section 8. Each licensee shall submit, with the annual renewal application, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year.

Section 9. (1) Each person registered with the board shall retain proof of attendance and completion of all continuing education requirements. These documents must be retained for a period of three (3) years from the end of the calendar year in which the continuing education was acquired. This documentation shall be produced for inspection and verification, if requested in writing by the board during its verification process. The board shall not maintain continuing education files.

(2) The board shall conduct a randomly selected audit of individual records to assure that the continuing education requirements have been met. An individual's record may be audited during consecutive renewal periods.

(3) If audited, the individual shall, within fifteen (15) working days of a request from the board, provide evidence of continuing education activities. Such evidence shall be submission of one (1) or more of the following:

(a) Certificates verifying the individual's attendance at the continuing education programs described above. An individual submitting a certificate as evidence of attendance at a continuing education program shall also be required to submit two (2) or more of the following for each program certified:

1. Registration receipt;
2. Signed program;
3. Canceled check;
4. Hotel bill;
5. Name badge; or

6. An original letter on official stationery signed by a professional associate who attended.

(b) An original letter on official institution stationery from the instructor of the college level course verifying that the course was completed and listing the number of credit hours of attendance completed by the individual; or

(c) An official transcript verifying credit hours earned. One (1) semester credit hour is equivalent to six (6) continuing education hours for the purpose of licensure renewal. Credit for auditing will be for the actual clock hours in attendance, not to exceed the academic credit.

Section 10. 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 reasons of 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 11. Each licensee shall keep the board informed of his correct address.

JON DURKIN, Board Chairman

APPROVED BY AGENCY: July 11, 1994

FILED WITH LRC: July 11, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994, 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 August 17, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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 ophthalmic dispensers and all apprentice ophthalmic dispensers.

(a) Direct and indirect costs or savings to those affected:

1. First year: Licensee must pay fee if required for continuing education.

2. Continuing costs or savings: Licensee must pay fee if required for continuing education.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Renewal forms and must be contain CE information.

(2) Effects on the promulgating administrative body: This administrative regulation will set the continuing education requirement.

(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: Renewal forms must be processed and CE programs must be reviewed.

(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 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 will be subject to this administrative regulation in the same ways.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150.010, 150.170, 150.470, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.170, 150.470

NECESSITY AND FUNCTION: To establish size and creel limits to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. It is necessary to promulgate a new administrative regulation to replace 301 KAR 1:200 because of extensive wording and format changes needed to comply with KRS Chapter 13A. Substantive changes from 301 KAR 1:200 effect white bass and striped bass size and creel limits at Dewey Lake, sauger size limits at Kentucky and Barkley lake and their tailwaters, trout size and creel limits in a portion of the Cumberland River, crappie creel limits at Grayson lake and the use of shad for bait at several department-owned lakes.

Section 1. Definitions. (1) "Artificial baits" means lures or flies made of wood, metal, plastic, feathers, preserved pork rind or similar inert materials and having no organic baits, such as insects, minnows, fish eggs, worms, corn, cheese, cut bait or a similar substance attached to the lure.

(2) "Daily limit" means the maximum number of a particular species or group of species a person may legally take in a day or have in possession while fishing.

(3) "Kentucky bass" means a largemouth bass, Kentucky bass or Coosa bass with a patch of teeth on its tongue.

(4) "Lake" means impounded waters.

(5) "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a rule and its tail lobes squeezed together.

(6) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(7) "Single hook" means a hook with only one (1) point.

(8) "Size limit" means the minimum legal length of a fish.

(9) "Slot limit" means protecting fish within a specified minimum and maximum size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation and by 301 KAR 1:180, persons fishing in public or private waters shall observe the following creel, possession and size limits.

(a) Black bass: daily limit six (6), possession limit, twelve (12).

1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.

2. Kentucky bass: no size limit.

(b) Rock bass: daily limit, fifteen (15), possession limit, thirty (30); no size limit.

(c) Walleye and their hybrids: daily limit ten (10), possession limit, twenty (20); size limit, fifteen (15) inches.

(d) Sauger: daily limit ten (10), possession limit twenty (20); no size limit.

(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.

(f) Chain pickerel: daily limit five (5), possession limit ten (10); no size limit.

(g) White bass and yellow bass, singly or in combination: daily limit thirty (30), possession limit sixty (60); no size limit.

(h) Striped bass and their hybrids: daily and possession limit,five (5); size limit, fifteen (15) inches.

(i) Crappie: daily limit, thirty (30), possession limit, sixty (60); no size limit.

(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit.

(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.

(2) Persons shall not remove grass carp from a lake owned and managed by the department.

(3) Persons catching illegal fish shall immediately return the fish, in the best possible physical condition, to the water from which it was taken.

(4) A person shall not remove any part of the head or tail of any fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) Persons who wish to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

Section 3. Fishing Season. The fishing season is open year round.

Section 4. Exceptions to Statewide Regulations. Persons fishing in the waters listed in this section shall observe the following special regulations. Except as specified in this section, all other provisions of this administrative regulation apply to these bodies of water.

(1) Bad Branch, Letcher County: artificial baits with single hooks only.

(2) Barkley Lake.

(a) Largemouth and smallmouth bass: size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: after February 28, 1995, size limit, fourteen (14) inches.

(3) Barren River Lake and the Barren River upstream from Barren River Lake.

(a) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20), possession limit forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(b) Crappie: size limit, nine (9) inches.

(c) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(4) Bert Combs Lake: after February 28, 1995, persons shall not possess shad or use shad for bait.

(5) Boltz Lake: after February 28, 1995, persons shall not possess shad or use shad for bait.

(6) Briggs Lake: after February 28, 1995, persons shall not possess shad or use shad for bait.

(7) Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(8) Carpenter Lake: after February 28, 1995, persons shall not possess shad or use shad for bait.

(9) Carr Fork Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(10) Carter Caves Lake.

(a) Fishing during daylight hours only.

(b) Largemouth bass: daily and possession limit, one (1) fish; size limit, twenty (20) inches.

(c) After February 28, 1995, persons shall not possess shad or use shad for bait.

(11) Cave Run Lake: largemouth bass and smallmouth bass: Size limit, fifteen (15) inches.

(12) Corinth Lake: after February 28, 1995, persons shall not possess shad or use shad for bait.

(13) Cumberland Lake.

(a) Largemouth and smallmouth bass: size limit fifteen (15) inches.

(b) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.

(c) Crappie: size limit, ten (10) inches.

(14) Cumberland River downstream from Barkley Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) After February 28, 1995, sauger: size limit, fourteen (14) inches.

(15) Cumberland River downstream from the Highway 61 bridge. Trout: After February 28, 1995, slot limit; fish between twelve (12) and twenty (20) inches shall be released; daily and possession limit, (4) four fish under twelve (12) inches and one (1) fish over twenty (20) inches. Persons shall not possess more than these trout limits while in this area, no matter where the fish were caught.

(16) Dale Hollow Lake.

(a) Smallmouth bass: daily limit, two (2); size limit, eighteen (18) inches.

(b) Walleye and their hybrids: daily limit, ten (10); size limit, sixteen (16) inches.

(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Muskellunge: daily limit, one (1).

(e) Rainbow trout and lake trout.

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.

2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.

(17) Dewey Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: after February 28, 1995, daily and possession limit, five (5); size limit, fifteen (15) inches.

(18) Dix River for two (2) miles downstream from Herrington Lake Dam.

(a) Artificial baits only.

(b) Brown trout: size limit, fifteen (15) inches.

(19) Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20) possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.

(20) Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - fish below twelve (12) inches may be kept; fish between twelve (12) and sixteen (16) inches shall be released. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.

(21) Elmer Davis Lake.

(a) Largemouth bass: slot limit - fish below twelve (12) inches or greater than sixteen (16) inches may be kept; black bass between

twelve (12) and sixteen (16) inches shall be released.

(b) After February 28, 1995, persons shall not possess shad or use shad for bait.

(22) Fishtrap Lake.

(a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.

(b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(23) Game Farm Lakes.

(a) Largemouth bass and smallmouth bass: daily limit, two (2); size limit, fifteen (15) inches.

(b) Channel catfish: daily limit, three (3).

(c) After February 28, 1995, persons shall not possess shad or use shad for bait.

(24) Grayson Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: no daily or possession limits through February 28, 1995. Beginning March 1, 1995, statewide daily and possession limits shall apply.

(25) Greenbo Lake. After February 28, 1995, persons shall not possess shad or use shad for bait.

(26) Green River Lake. Crappie: size limit, nine (9) inches.

(27) Guist Creek Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(28) Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: Daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.

(29) Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass: size limit fourteen (14) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fourteen (14) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: after February 28, 1995, size limit, fourteen (14) inches.

(30) Leary Lake.

(a) Fishing is permitted during daylight hours only.

(b) Largemouth bass: daily limit, one (1); size limit, fifteen (15) inches.

(c) Bluegill: daily limit, twelve (12).

(d) Channel catfish: daily limit two (2).

(31) Lincoln Homestead Lake.

(a) Fishing is permitted during daylight hours only.

(b) Largemouth bass: daily limit three (3); size limit, fifteen (15) inches.

(c) Bluegill and redear sunfish: daily limit, ten (10) fish over seven (7) inches, singly or in combination; no limit on fish less than seven (7) inches.

(d) Channel catfish: daily limit, three (3).

(e) After February 28, 1995, persons shall not possess shad or use shad for bait.

(32) Lake Malone. Largemouth bass: daily limit may include no more than two (2), and the possession limit no more than four (4), fish under twelve (12) inches.

(33) Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) After February 28, 1995, persons shall not possess shad or use shad for bait.

(34) Martins Fork and its tributaries in Harlan County from the Left Fork upstream two and three-tenths (2.3) miles to the Cumberland Gap National Park boundary. Artificial baits with single hooks only.

(35) Mauzy Lake. Largemouth bass; no size limit.

(36) McNeely Lake. After February 28, 1995, persons shall not possess shad or use shad for bait.

(37) Mill Creek Lake. After February 28, 1995, persons shall not possess shad or use shad for bait.

(38) Nolin River Lake. Crappie: size limit, nine (9) inches.

(39) Ohio River.

(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit may be fifteen (15) inches long or longer.

(40) Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(41) Parched Corn Creek, Wolfe County. Artificial baits with single hooks only.

(42) Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 392. Artificial baits with single hooks only.

(43) Lake Reba.

(a) Largemouth and smallmouth bass: size limit, fifteen (15) inches.

(b) After February 28, 1995, persons shall not possess shad or use shad for bait.

(44) Rough River Lake. Crappie: size limit, nine (9) inches.

(45) Shanty Hollow Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) After February 28, 1995, persons shall not possess shad or use shad for bait.

(46) Shillalah Creek, Bell County, outside the Cumberland Gap National Park. Artificial baits with single hooks only.

(47) Spurlington Lake. After February 28, 1995, persons shall not possess shad or use shad for bait.

(48) Taylorsville Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: daily limit, fifteen (15), possession limit, thirty (30).

(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(49) Tennessee River downstream from Kentucky Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: after February 28, 1995, size limit, fourteen (14) inches.

(50) Yatesville Lake. Largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. 301 KAR 1:200, Seasons and limits for angling, is repealed.

C. THOMAS BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: July 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Monday, August 29, 1994 at 9 a.m. in the meeting room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard shall notify this agency in writing by August 24, 1994, 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 the contact person.

CONTACT PERSON: Peter W. Pfeiffer, Director, Division of Fisheries, Department of Fish & Wildlife Resources, Frankfort, Kentucky 40601, (502) 564-3596.

REGULATORY IMPACT ANALYSIS

Agency Contact: C. Thomas Bennett

(1) Type and number of entities affected: Approximately one million anglers fish Kentucky waters each year.

(a) Direct and indirect costs or savings to those affected:

1. First year: There are no additional costs or saving associated with this administrative regulations.

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 are no reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs and savings:

1. First year: No additional costs or savings are associated with this administrative regulation.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None are anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None have been identified.

(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: Although this is a new administrative regulation, there are only minor substantive changes from 301 KAR 2:100, which it replaces and repeals. It was necessary to promulgate a new administrative regulation because of the extensive format and wording changes needed to bring this regulation in compliance with KRS Chapter 13A. Changes in substance from 301 KAR 1:200 are:

(a) To establish a trophy trout fishery in the Cumberland River.

(b) To establish combined size and creel limits for white bass, striped bass and hybrids at Dewey Lake.

(c) To prohibit the use or possession of shad at department-owned lakes to prevent shad from becoming established.

(d) To return Grayson Lake to statewide limits on crappie.

(e) To establish a size limit on sauger in Kentucky and Barkley lakes and their tailwaters.

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.

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 4:200. Cyprus AMAX and Robinson Forest Wildlife Management Areas use requirements and restrictions.

RELATES TO: KRS 150.170, 150.175, 150.250, 150.620, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.015, 150.021, 150.170, 150.175, 150.240, 150.700

NECESSITY AND FUNCTION: To provide for the protection, conservation, use and management of the lands, waters, and wildlife associated with the Cyprus AMAX Wildlife Management Area and Robinson Forest Wildlife Management Area by detailing requirements and restrictions for permit agents and users of these areas.

Section 1. Definitions. (1) "The area" means the Cyprus AMAX Wildlife Management Area and the Robinson Forest Wildlife Management Area, those lands in Breathitt, Knott and Perry counties owned by the Cyprus AMAX Mineral Company or the University of Kentucky and managed by the department pursuant to agreements between the department, Cyprus AMAX Mineral Company and the University of Kentucky.

(2) "Group" means any family, organization or gathering using the area for a specific event.

(3) "Private inholding" means lands completely surrounded by the area but not owned by the University of Kentucky or the Cyprus-AMAX Mineral Company.

(4) "Security deposit" means a bond, irrevocable letter of credit from a financial institution, or benefits on a certificate of deposit irrevocably assigned to the department.

Section 2. User Permits. Persons sixteen (16) years of age or older on the area for any purpose shall have in their possession a nontransferable user permit except:

(1) Employees, agents or persons under contract to Cyprus AMAX Mineral Company, the University of Kentucky or the department performing their official duties; or

(2) Persons on the area as a necessary part of their jobs or to protect public safety or well-being; or

(3) Persons on the area for educational purposes and accompanied by officials of the University of Kentucky; or

(4) Persons conducting research on the area with the written approval of the department, Cyprus AMAX Mineral Company or the University of Kentucky; or

(5) Persons hiking on the Boardinghouse Interpretive Trail from the mouth of Boardinghouse Branch to the Robinson Forest Fire Tower.

Section 3. Private Inholdings and Closed Watersheds. (1) Private inholdings shall be open to hunting or fishing only when the area is open to hunting or fishing.

(2) Persons shall not hunt, fish, train dogs or conduct field trials on lands owned by the University of Kentucky in the Clemons Fork, Coles Fork and Lewis Fork watersheds or in the Buckhorn Creek watershed below Hurricane Branch and above Lewis Fork.

Section 4. Event Permits. (1) In lieu of individual user permits, a person representing a group using the area may have in possession an event permit.

(2) The event permit shall apply to all members of the group.

(3) An event permit shall specify:

(a) Its period of validity, not to exceed four (4) days;

(b) The activity in which the group will engage;

(c) The name of the group;

(d) The approximate number of persons in the group; and

(e) The name and address of the person representing the group.

(4) The department shall not issue event permits for activities in which game or fish are taken.

Section 5. Permit Applications. (1) Persons shall apply for individual or event permits on forms provided by the department.

(2) Persons shall not knowingly provide false information on permit applications.

(3) Fees.

(a) Individual permits: ten (10) dollars annually;

(b) Event permits: twenty-five (25) dollars per event.

(4) Persons applying by mail shall include a certified check or money order for the correct amount.

(5) Applicants shall provide all information required on the application form. The department shall return incomplete applications to the applicant.

(6) Permits issued before February 29, 1996, shall be valid through that date. After February 29, 1996, permits shall be valid from March 1 through the end of February of each year.

(7) The department may:

(a) Limit the number of event permits issued; or

(b) Assign specific locations for events; or

(c) Deny applications for events which would interfere with management objectives for the area or unduly interfere with other uses or users; or

(d) Revoke individual or event permits for violations of the terms of the application or this administrative regulation.

(8) The department shall keep all applications, waivers of liability and copies of permits for a minimum of two (2) years after the permits expire.

Section 6. Permit Replacement or Refund. (1) Persons who lose their permits may make a written request to the department for a duplicate and include a four (4) dollar replacement fee. The department shall issue a duplicate upon verification that a permit was purchased.

(2) The department shall issue refunds only to persons who have purchased multiple individual permits valid for the same period of time.

(3) The department shall issue refunds only to representatives of groups who have purchased multiple event permits for the same event.

(4) Persons wishing a refund for multiple permits shall make a written request to the department and enclose the permit for which a refund is sought.

(5) The department shall issue refunds if it can verify that multiple permits were issued.

Section 7. Prohibited Activities. Except for persons exempted from permit requirements by Section 2(1), (2), (3), and (4) of this administrative regulation, persons on the area shall not:

(1) Swim for recreational purposes;

(2) Camp except in designated camping areas;

(3) Have a fire, except in designated camping areas;

(4) Operate motorized vehicles off existing roads or beyond where signs indicate vehicles are not allowed;

(5) Operate vehicles not licensed or legal for use on public streets;

(6) Block roads or gates;

(7) Discharge firearms, except while hunting;

(8) Construct structures or stands except portable deer stands, which hunters shall remove daily;

(9) Use boats;

(10) Hunt or fish in areas designated by signs as closed to hunting or fishing;

(11) Enter areas designated by signs as no trespassing areas;

(12) Act contrary to instructions from officials of the department, the University of Kentucky or the Cyprus AMAX Mineral Company.

Section 8. Fishing Restrictions. (1) Persons fishing on all impounded bodies of water on the area shall:

(a) Fish only from July 1 through December 31; and

(b) Fish only during daylight hours.

(2) Persons fishing on Starfire Lake shall abide by the following limits:

Species	Creel Limit	Size Limit
Largemouth bass	1	20"
Sunfish	10	none
Channel catfish	4	15"

Section 9. Permit Agent Qualifications, Issuing Fees, Issuance Requirements, and Reporting Requirements. (1) Event permits are available only from the department.

(2) The department may designate as permit agents to sell individual permits:

(a) The county clerks of Breathitt, Knott, Perry, Floyd, Lee or Letcher counties; or

(b) Businesses in Breathitt, Knott, Perry, Floyd, Lee or Letcher counties customarily open at least fifty-six (56) hours per week, year round.

(3) Businesses wishing to become permit agents shall:

(a) Complete an issuing agent application form and agreement; and

(b) Pay in advance for permits consigned; or

(c) Furnish a security deposit equal in value to the permits consigned.

(4) Permit agents.

(a) Shall retain an issuing fee of forty (40) cents from each permit sold.

(b) Shall not charge additional fees for issuing permits.

(c) Shall issue permits sequentially.

(d) Shall not knowingly record false information on the permit.

(e) Shall, on or before the tenth day of the month following the month of sale:

1. Report to the department the number of permits issued;

2. Remit monies collected, less the issuing fee; and

3. Send the department completed and signed permit applications.

(f) Shall, on or before March 25:

1. Report to the department the number of permits issued for the preceding year and the amount of money remitted; and

2. Return all unissued permits.

(g) Shall pay the department for unissued permits not returned.

(h) Shall file reports on forms supplied by the department.

(5) If the permit agent does not remit monies due, the department shall make collection through the agent's security deposit.

(6) If an error is made in issuing that cannot be clearly and legibly corrected, permit agents shall void the permit, issue a new one and return the voided permit in its entirety with the next monthly report.

Section 10. Revoking Permit Agent Designations. (1) The department may revoke permit agent designations if:

(a) The permit agent is delinquent in submitting reports and monies four (4) times in a twelve (12) month period; or

(b) The permit agent fails to respond to a reminder notice and does not report and remit by the 25th of the month the report is due; or

(c) The permit agent's check will not clear the bank and the permit agent does not make restitution by a certified check, cashier's check or money order within five (5) working days of notification.

(d) The permit agent does not remit fees owed as a result of an audit.

(2) A permit agent whose designation is revoked shall not be eligible for reinstatement for a period of twelve (12) months.

(3) If a designation is revoked the department shall:

(a) Collect all unissued permits and unreported sales; and

(b) Collect all monies due through the permit agent's security deposit.

Section 11. Audits. The department may audit the consignment, records and reports pertaining to the sale of permits without prior notice during the permit agent's regular business hours.

Section 12. Material Incorporated by Reference. (1) The following forms are incorporated by reference:

(a) Application for Appointment as Issuing Agent, Cyprus-AMAX and Robinson Forest User Permit.

(b) Issuing Agent Agreement for Cyprus AMAX and Robinson Forest User Permits.

(c) Agreement For Access to Designated Cyprus AMAX - Robinson Forest Lands: Individual Permit.

(d) Agreement for Access to Designated Cyprus AMAX - Robinson Forest Lands: Event Permit.

(2) This material may be obtained from, or examined or copied at, the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. eastern time.

C. TOM BENNETT, Commissioner
CRIT LUALLEN, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: June 10, 1994

FILED WITH LRC: July 1, 1994 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1994 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 August 21, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Arthur R. 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 5,000 users will have to purchase permits.

(a) Direct and indirect costs or savings to those affected:

1. First year: Direct costs will be $10 per individual user unless they are covered by an event permit. Indirect costs will not be greater than they ever were and will consist of expenses related to outdoor recreation.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants will have to complete application forms and license vendors will have to apply and provide reports as a result of this regulation.

(2) Effects on the promulgating administrative body: Administrative services to issue and supply licenses to vendors will have to be established.

(a) Direct and indirect costs and savings:

1. First year: All costs are fixed in that existing personnel will accomplish the work. This arrangement could change, however, if the workload becomes too cumbersome.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Permit sales will be audited along with others licenses and permits that are sold by the agency so no additional costs will be incurred relating to reporting and paperwork.

(3) Assessment of anticipated effect on state and local revenues: State management of these lands should highlight the areas sufficiently to draw outdoor recreationalists into the Knott, Breathitt, and Perry County area. These tourists will provide revenue directly into the local economies.

(4) Assessment of alternative methods; reasons why alternatives were rejected: If the department did not develop the cooperative relationship to manage these lands, they would have remained closed to outdoor recreation. Our relationship allows public recreation where it has not been provided. Since these lands are not eligible for federal aid cost sharing the department decided to apply a user fee to the area under the assumption that all users had some impact on the lands.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering was applied to recognize two classes of users, individuals and groups. Availability of group permits was restricted to accommodate only short-term, sporadic users as opposed to those that utilized the area frequently.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes. We anticipate developing a cooperative working relationship with affected counties in order to facilitate our management and encourage users to travel to and expend funds to benefit the local economies.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Only the part relating to commerce and infrastructure upkeep.

3. State the aspect or service of local government to which this administrative regulation relates. None directly in that it requires nothing. Should the local government desire to work with us in developing tourism, these areas offer the vehicle and the motivation.

4. How does this administrative regulation affect the local government or any service it provides? Same as in #3 above.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Office of Administrative Hearings

400 KAR 1:001. Definitions for 400 KAR Chapter 1.

RELATES TO: KRS 146.450, 146.530, 146.990, 151.125, 151.182, 151.184, 223.200, 223.420, 223.991, 224.10-270, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.20-755(7), 224.60-130, 224.60-140, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 30 CFR Parts 724, 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 146.450, 146.990, 151.125, 223.200, 223.991, 224.10-100, 224.10-420, 224.10-430, 224.60-120, 350.020, 350.028, 350.0301, 350.465, 350.610, 30 CFR

Parts 724 730, 724, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of administrative hearings concerning matters covered by KRS Chapters 146, 223, and 224. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearings administrative regulations with respect to procedural aspects of administrative hearings. This administrative regulation provides for defining of certain essential terms used in 400 KAR Chapter 1.

Section 1. Definitions. As used in this chapter, the following terms shall have the following meanings:

(1) "Administrative hearing" means a formal adjudicatory hearing conducted before the cabinet pursuant to KRS Chapter 146, 151, 223, 224, or 350.

(2) "Cabinet" is defined in KRS 151.100, 223.400, 224.01-010 and 350.010.

(3) "Chief hearing officer" means the individual duly qualified and designated by the secretary as the chief hearing officer of the office.

(4) "Defendant" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document; term is interchangeable with "respondent".

(5) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct administrative hearings; term includes the chief hearing officer.

(6) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order or other document which commences an administrative proceeding.

(7) "Office" means the office of administrative hearings.

(8) "Party" means the named person whose legal rights, duties, privileges, or immunities are being adjudicated in the administrative hearing, or any other person who is duly granted intervention in the administrative hearing, and includes any agency named as a party to the adjudicatory proceeding or entitled or permitted by law to participate fully in the administrative hearing.

(9) "Person" is defined in KRS 151.100, 224.01-010 and 350.010.

(10) "Petitioner" means the party filing an initiating document in an action before the office; term is interchangeable with "plaintiff".

(11) "Plaintiff" means the party filing an initiating document in an action before the office; term is interchangeable with "petitioner".

(12) "Pleading" means the initiating document, the answer, and any other responsive pleading ordered by a hearing officer or authorized by administrative regulation.

(13) "Record" means the transcript of a proceeding, if any, and rulings; and all pleadings, motions, responses, replies and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections and rulings thereon; proposed findings and recommended orders; and legal briefs and orders.

(14) "Respondent" means any person against whom a claim is made in any action filed in the office and includes any person so designated in the caption of an initiating document; term is interchangeable with "defendant".

(15) "Responsive pleading" means the answer or any document required or authorized by administrative regulation or a hearing officer to be filed in response to a pleading.

(16) "Secretary" is defined in KRS 146.210, 151.100, 223.400, 224.01-010 and 350.010.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held August 26, 1994, at 10 a.m. EDT in G-1, Capital Plaza Tower, Frankfort, Ky. Persons interested in being heard at this hearing shall notify this agency in writing by August 21, 1994. 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 regulations. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on August 26, 1994. Comments received after that time will not be considered. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: Barbara A. Foster, Chief Hearing Officer, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, KY 40601, (502) 564-7312.

The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provisions of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Any individual who requires special accommodations in connection with this proceeding should contact Jane P. Wingate at 35-36 Fountain Place, Frankfort, KY 40601 or call (502) 564-7312 or (502) 564-4973 (telefax) at least one week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Agency Contact: Hon. Barbara A. Foster

(1) Type and number of entities affected: This administrative regulation provides for defining of certain essential terms used in 400 KAR Chapter 1. As such, these regulations will pertain to any person interested in or adversely affected by a determination or enforcement action initiated by the cabinet, hereinafter "affected entities". Given the size and complexity of the various environmental programs, it is impossible to accurately determine the number of affected entities. It is worthwhile to note, however, that approximately 950 active formal administrative cases are pending before the Office of Administrative Hearings which will be immediately affected by this administrative regulation upon date of adoption.

(a) Direct and indirect costs or savings to those affected:

1. First year: None. This administrative regulation provides only definitions to be used in defining essential terms in 400 KAR Chapter 1.

2. Continuing costs or savings: Not applicable. See above.

3. Additional factors increasing or decreasing costs: Not applicable. See above.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None. This administrative regulation provides only definitions to be used in defining essential terms in 400 KAR Chapter 1.

2. Continuing costs or savings: None. See above.

3. Additional factors increasing or decreasing costs: None. See above.

(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: Not applicable.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping, or duplication: Some of the terms employed in this administrative regulation are defined in other titles and chapters of the Kentucky Administrative Register. In accordance with the requirements of KRS Chapter 13A, each title must set forth its own definitions to be used in each chapter and cannot cross reference to definitions in other chapters.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because under the KRS Chapter administered by the cabinet, these requirements must apply equally to all entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. A. The administration of the surface mining and reclamation enforcement program by the State under the auspices of KRS Chapter 350 is governed by the statutory provisions set forth in Federal Surface Mining Control and Reclamation and Act, PL 95-87. Accordingly, the following federal provisions are applicable: 30 USC 1253, 1255, 30 CFR Parts 724, 730, 731, 732, 733, 735, and 917.

B. The administration of the various environmental provisions arising under KRS Chapters 146, 151, 223, and 224 are not subject to federal statutes or regulations constituting a federal mandate as such. The cabinet's Department for Environmental Protection administers under state authority some programs that have federal counterparts administered by the United States Environmental Protection Agency (EPA). The federal statutes authorize EPA to approve state programs which are consistent with and no less stringent than the federal programs. None of the programs that EPA has delegated to the cabinet requires the promulgation of state regulations governing the procedural aspects of a state administrative hearing.

2. State compliance standards. KRS Chapter 350 in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of hearings concerning matters covered by KRS Chapters 146, 223, and 224. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearing, rules and administrative regulations with respect to procedural aspects of hearings. This administrative regulation provides for defining of certain essential terms used in 400 KAR Chapter 1.

3. Minimum or uniform standards contained in the federal mandate. A. The federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 USC 1201 et seq. establishes the basis whereby state and federal authorities regulate surface mining and reclamation operations. Title 5 of SMCRA contains the provisions whereby persons aggrieved by an action of the regulatory authority may challenge that action through an adjudicative process. This provision was satisfied by the implementation of 405 KAR 7:091 and 405 KAR 7:092. This administrative regulation will define certain essential terms in 400 KAR and will pertain only to the provisions of that chapter. The regulation, however, will be subject to review by the Office of Surface Mining and the governing standard is that the regulation must be as effective as the federal program. 30 USC 1253, 1255.

B. With respect to the administration of KRS Chapters 146, 151, 223 and 224, there are no minimum or uniform standards contained 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? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part of division of local government this administrative regulation will affect. This administrative regulation will affect any division of local government filing a petition for hearing under KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers and KRS Chapter 224 relating generally to environmental protection, and the administrative regulations promulgated pursuant thereto. This administrative regulation will also affect any division of local government named as a defendant in an administrative complaint filed under those chapters and the administrative regulations promulgated pursuant thereto. This administrative regulation also applies to administrative hearings relating to mining conducted under KRS Chapter 350 and the regulations promulgated pursuant thereto, but it is not expected to affect divisions of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to administrative hearings to which divisions of local government are parties.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimate cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: No effect on expenditures and revenues of divisions of local government that are parties to administrative hearings authorized under KRS Chapters 146, 151, 223 and 224 and the administrative regulations promulgated pursuant thereto is expected, since this administrative regulation is consistent with existing statutory requirements, current administrative practice, the Kentucky Rules of Civil Procedure, and 405 KAR 7:091 and 7:092 governing administrative hearings authorized by KRS Chapter 350.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

400 KAR 1:090. Administrative hearings practice provisions.

RELATES TO: KRS 146.450, 146.530, 146.990, 151.125, 151.182, 151.184, 223.200, 223.420, 223.991, 224.10-270, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.20-755(7), 224.60-130, 224.60-140, 350.028, 350.0301, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 30 CFR Parts 724, 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 146.450, 146.990, 151.125, 223.200, 223.991, 224.10-100, 224.10-420, 224.10-430, 224.60-120, 350.020, 350.028, 350.0301, 350.465, 350.610, 30 CFR Parts 724, 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part authorizes the cabinet to promulgate administrative regulations pertaining to surface coal mining and reclamation operations and coal

exploration operations. This administrative regulation sets forth practice provisions for the permanent regulatory program in addition to those found in 405 KAR 7:091 and 405 KAR 7:092. KRS Chapters 224 and portions of KRS Chapters 146 and 223 in pertinent part authorize the cabinet to promulgate administrative regulations pertaining to the conduct of administrative hearings concerning matters covered by KRS Chapters 146, 223, and 224. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapters 146, 223 and 224. KRS Chapter 151 in pertinent part authorizes the secretary to promulgate, without notice or hearing, rules and administrative regulations with respect to procedural aspects of administrative hearings. This administrative regulation sets forth practice provisions for the administration of matters falling under KRS Chapter 151.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapters 151, 224, and 350, and pertinent portions of KRS Chapters 146 and 223, including those pending at the time this administrative regulation becomes effective.

Section 2. Construction. This administrative regulation shall be construed liberally and in conformity with reasonable administrative practice to achieve just, timely and inexpensive determinations of matters before the office. This administrative regulation is not intended to be comprehensive, and nothing contained herein shall be construed to limit the authority of a hearing officer to govern the conduct of his docket or the procedural course of a particular administrative hearing as authorized by statute and administrative regulation and in accordance with reasonable administrative practice.

Section 3. Assignment of Case Numbers and Captions. (1) Assignment of case numbers. The office shall stamp each initiating document filed on the date received by the office and shall assign a file number to that document.

(2) Captions generally. All initiating documents, pleadings, motions, orders and all other papers filed in any case before the office shall be uniformly marked in the caption to indicate the file number(s) and, where applicable, shall show the permit number(s), the noncompliance number(s), the cessation order number(s), the notice of violation number(s), the petitioner's or plaintiff's name(s), the respondent's or defendant's name(s), and any intervenors' names.

(3) Consolidated case captions. All documents filed in consolidated proceedings shall list all case file numbers as set forth in subsection (2) of this section. If a document filed in a consolidated proceeding pertains to some, but not all, of the cases consolidated, the party filing such a document shall indicate in the text thereof the case(s) to which the document applies.

Section 4. Facsimile Filings. (1) Time and manner of filing. Persons filing documents with the office may file such documents by telefacsimile machine at the telefacsimile number listed for the office. The telefacsimile document shall be stamped filed according to the time and date stamp placed on the telefacsimile copy by the telefacsimile machine and shall be promptly filed in the record upon retrieval from the telefacsimile machine. If the telefacsimile machine malfunctions, the telefacsimile document shall be stamped as of the date actually received in the office.

(2) Originals filed. Parties filing by telefacsimile machine shall immediately after telefaxing a document file the original of the document with the office. The original shall be file stamped on the date actually received by the office. The effective date of filing shall be the date of the receipt in the office of the telefacsimile document or the original document, whichever is earlier.

Section 5. Initiating Documents, Answers and Responsive Pleadings. (1) Initiating documents. In addition to other administrative regulations governing the contents of an initiating document, an initiating document shall contain a statement of facts entitling the filing party to administrative relief, shall contain a specific request for the relief to which the filing party deems himself entitled, shall identify by name and file number all related actions pending before the office known to the filing party, shall identify by name and address all interested persons known to the filing party unless such persons have expressed a desire to have their identity kept confidential, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the filing party and, if he is represented, his counsel.

(2) Answers and responsive pleadings. In addition to other administrative regulations governing the contents of an answer or responsive pleading, an answer or responsive pleading, if required or permitted, shall specifically admit or deny each allegation contained in the initiating document, shall set forth other matters to be considered in the action, and shall set forth the current, complete and correct name, address, telephone number, and telefax number, if any, of the responding party and, if he is represented, his counsel. If a responding party is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state and this shall have the effect of a denial.

(3) Effect of failure to deny. Allegations in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. Allegations in a pleading to which a responsive pleading is required may be deemed admitted when not denied in the responsive pleading. Failure to plead any available administrative affirmative defense in a required responsive pleading may constitute a waiver of such defense, except that lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted shall not be waived by failure to assert them in a responsive pleading.

Section 6. Prehearing Conferences. (1) General provisions. To the extent practicable, a prehearing conference shall be held in all cases filed with the office.

(2) Telephonic prehearing conferences. Prehearing conferences may be held in person or by telephone. Any party who requests a telephonic prehearing conference shall initiate the conference call, unless the hearing officer orders otherwise.

Section 7. Mediation. (1) General provisions.

(a) Referral to mediation. At any time prior to the conclusion of the final prehearing conference, a hearing officer may, by appropriate order, refer all or any part of any case to nonbinding mediation. A case shall not be referred for mediation if the cabinet advises the hearing officer that mediation would require deviation from statutory or regulatory requirements. Cases may be referred to any mediator employed by the office or approved by the chief hearing officer.

(b) Disqualification of mediator. Any party may move the hearing officer to enter an order disqualifying the mediator for good cause, except that employment by the cabinet shall not constitute good cause for such disqualification. If the hearing officer rules that a mediator is disqualified from mediating the case, he shall enter an order referring the matter to another mediator. Nothing in this provision shall preclude a mediator from disqualifying himself or refusing any assignment. Unless the hearing officer orders otherwise, the time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(c) Statements not admissible. No statements or admissions made for the purpose of mediation are subject to disclosure through discovery, nor may they be admitted in evidence at an administrative hearing or used by the hearing officer in making any report and recommendation to the secretary.

(d) Proceedings not stayed. Referral of a case to mediation shall not operate as a stay of discovery or other prehearing proceedings, unless otherwise ordered by the hearing officer or agreed to in writing

by the parties. While a case is in mediation, the hearing officer may schedule periodic prehearing conferences to ascertain the status of mediation.

(2) Mediation conferences.

(a) Time and purpose of conference. Within ten (10) days from the entry of a mediation referral order, the mediator shall schedule a mediation conference, which shall be held within thirty (30) days from the entry of the mediation referral order unless otherwise agreed to in writing by the parties. The conference shall be conducted by the mediator to consider the possibility of settlement, the simplification of the issues and any other matters which the mediator and the parties determine may aid in the handling or the disposition of the proceedings.

(b) Duration. The mediator may schedule such sessions as are necessary to complete the process of mediation, and mediation shall continue until the parties have reached a settlement, until any party is unwilling to proceed further, until the mediator determines that further efforts would be of no avail, or until the hearing officer orders the matter remanded from mediation. After the conclusion of the first mediation conference, any party may move the hearing officer to remove the case from mediation and to set the case for a prehearing conference or an administrative hearing.

(c) Appearance at conference. The parties shall attend the mediation conference(s). Counsel may also be present. If a party to mediation is the cabinet or any other public entity, that party shall be deemed to appear at a mediation conference by the presence of a representative with full authority to negotiate on behalf of the cabinet or other entity and to recommend settlement to the secretary or to the appropriate decision-making body of the entity. In all other cases, a party is deemed to appear at a mediation conference if that party or a representative having full authority to settle without further consultation is present.

(d) Production of documents and witnesses. The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the mediation sessions, but has no authority to order such production.

(3) Reporting to the hearing officer.

(a) Refusal to accept. The mediator shall notify the hearing officer promptly in writing when a case is not accepted for mediation.

(b) Remand prior to settlement. At any time after the case has been referred for mediation, the mediator may for good cause in writing return the case to the hearing officer. The hearing officer shall promptly thereafter schedule a prehearing conference or an administrative hearing.

(c) Full settlement. If a case is settled prior to or during mediation, an attorney for one (1) of the parties shall promptly prepare and submit to the hearing officer an agreed order reflecting the terms of the settlement in accordance with Section 16 of this administrative regulation.

(d) Partial settlement. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall, within ten (10) days of the conclusion of mediation, file with the office a joint statement enumerating the issues that have been resolved and the issues that remain for an administrative hearing. The hearing officer shall then return the matter to his active docket and promptly schedule a prehearing conference or an administrative hearing.

(e) Mediator's report. Within ten (10) days of the conclusion of cases accepted for mediation, the mediator shall state in writing to the hearing officer that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall state in writing the lack of an agreement to the hearing officer and shall make no other comment or recommendation.

Section 8. Entry of Appearance and Notice of Withdrawal. (1) Filing of notice of entry of appearance. All attorneys representing parties before the office must file a written notice of entry of appearance in each case before they may practice in that case before the office. The notice of entry of appearance must set forth the current, complete and correct name, address, telephone number and telefax number, if any, of the attorney and his client. An attorney is not required to file a separate notice of entry of appearance if he files the initial pleading on behalf of his client in conformity with Section 5 of this administrative regulation.

(2) Withdrawal of representation. An attorney of record shall not withdraw from representation in a proceeding before the office without leave of the hearing officer. Leave shall be given unless the hearing officer determines that the withdrawal will result in substantial prejudice or will unduly delay the consideration and resolution of the case.

(3) Filing of notice of change of address. Each party or, if he is represented, his counsel shall promptly notify the office of any change of address, telephone number, or telefax number required to be filed pursuant to this administrative regulation by filing a notice of entry of change of address in the record.

Section 9. Motion Practice. (1) General provisions. All requests for relief which are not required to be made in a pleading shall be in the form of a motion. All motions filed with the office shall state precisely the relief requested, with citations to the record, the administrative regulations or the law as appropriate. All written motions shall comply with the provisions of this section. Failure to comply with this section may be grounds for denying the motion.

(2) Motions. All motions filed with the office going to the merits of a case, including motions to dismiss, motions for summary disposition, motions to strike, and motions on the pleadings shall be accompanied by a brief memorandum setting forth the grounds for the motion and shall contain citation of authorities relied upon.

(a) No memorandum in support of a motion longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(b) A motion shall indicate in its caption the nature of the motion.

(3) Responses. Any party properly served with a motion may file a response memorandum opposing the motion, with citation of supporting authorities.

(a) A response memorandum shall be filed no later than fifteen (15) days of the date of service of a motion unless a different response time is ordered by the hearing officer. The time for filing a response memorandum may be extended once without leave of the hearing officer for no more than thirty (30) additional days by written agreement of all parties filed in the office within fifteen (15) days of service of the motion.

(b) No response memorandum longer than twenty-five (25) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A response memorandum shall indicate in its caption that it is a response memorandum.

(4) Replies. Any party properly served with a response memorandum may file a reply memorandum addressing only matters initially raised in the response.

(a) A reply memorandum shall be filed no later than five (5) days of the date of service of a response memorandum unless a different reply period is ordered by the hearing officer. The time for filing a reply memorandum may be extended once without leave of the hearing officer for no more than ten (10) additional days by written agreement of all parties filed in the office within five (5) days of service of the response memorandum.

(b) No reply memorandum longer than ten (10) pages in length shall be filed in the office without prior leave of a hearing officer.

(c) A reply memorandum shall indicate in its caption that it is a reply memorandum.

(5) Failure to file supporting memorandum. Failure to file a memorandum in support of a motion or in support of a response or reply may be grounds for ruling against the party failing to file the

supporting memorandum.

(6) Format of memoranda. All motions, memoranda, pleadings and briefs filed with the office shall conform to the following requirements:

(a) Paper size and binding. All motions, memoranda, pleadings and briefs shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock. Filings shall not be side-bound or top-bound with bindings that interfere with the inclusion of the papers or pleadings in the office files unless permitted by the hearing officer.

(b) Type size and style. All motions, memoranda, pleadings and briefs shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch.

(c) Signature. All motions, memoranda, pleadings and briefs shall be signed by the party or counsel submitting same and shall include the name, address, telephone number and telefax number, if any, of the attorney of record or party filing such document.

(d) Certificate of service. All documents served under these administrative regulations shall have proof of service by a written certification. Proof of service shall state the date and method of service and shall be signed by a person who can verify service.

(7) Originals only filed. Unless otherwise ordered by the hearing officer, only the original motion, memorandum, pleading or brief, together with any telefacsimile thereof, shall be filed with the office.

(8) Submission of authority. If a person filing a motion, brief or memorandum has relied upon a pertinent case decision or other legal authority in the motion, brief or memorandum, that person may submit with such motion, brief or memorandum a copy of the case decision or other legal authority. If the person submits a copy of authority, he shall serve upon all other parties to the case a copy of the case decision or other legal authority with the memorandum or motion. Such copies of authority shall not be filed in the record but may be relied upon by the hearing officer.

(9) Proposed orders. No motion, response or memorandum supporting or opposing a motion shall be accepted for filing by the office unless accompanied by a tendered separate proposed order granting the requested relief or denying the motion. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the office is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

(10) Good cause exception. The hearing officer may exempt a party from compliance with subsections (6) and (9) of this section upon a showing of good cause or undue hardship.

Section 10. Hearings on Motions. (1) Requests for hearing on motion. Any party making a motion may request that such motion be heard before the hearing officer assigned to the case in which the motion is made. A request for a hearing on a motion shall give notice that the motion will be heard on the first regularly scheduled motion day for the hearing officer that follows the expiration of the time for filing a reply memorandum unless otherwise ordered by the hearing officer.

(2) Court reporter. Any party may arrange for a court reporter to record a hearing on a motion. The party requesting the court reporter shall bear all appearance costs and expenses associated with having the court reporter at the motion hearing.

(3) Motion days. Motion days shall be conducted on a regular basis according to a schedule established by the office. The office shall post a current schedule which sets forth the time, place and date of upcoming motion days.

(4) Failure to appear at hearing. A hearing officer before whom a motion is made may deny any motion for which a movant schedules or notices a hearing and fails to appear. A hearing officer before whom a motion is made may grant any motion for which a movant schedules or notices a hearing and the nonmovant fails to appear, upon proof by the movant filed in the record that the motion was served on the nonmoving party.

Section 11. Motion for Continuance. No motion for a continuance shall be granted if made within two (2) days of a prehearing conference or fifteen (15) days of an administrative hearing, unless compelling cause is shown therefor. All motions for a continuance shall be in writing, shall be filed with the office, and shall be served upon all other parties to the case. Continuances shall not be granted upon oral motion absent good cause shown.

Section 12. Directed Recommendation. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, the opposing party may move the hearing officer for a directed recommendation to the secretary. The moving party shall state the specific grounds therefor. In ruling on the motion for directed recommendation, the hearing officer shall consider all of the evidence presented at the administrative hearing by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines there is not substantial evidence appearing in the record upon which the secretary could grant the nonmoving party relief, the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.

(2) Motion for directed recommendation not a waiver. A motion for a directed recommendation is not a waiver of an administrative hearing. A party who moves for a directed recommendation at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.

Section 13. Dismissal for Failure to Prosecute. Cases which have been on the docket of the office for a period of one year without any activity shall be dismissed, with prejudice, for failure to prosecute unless there is good cause shown why they should not be dismissed. Once per year the office shall determine all cases in which no activity has been taken for one year or more. Thereafter, the hearing officer to whom such cases are assigned shall issue an order directing the petitioner or plaintiff of the case to show cause why the case should not be dismissed. If the petitioner or plaintiff does not show good cause why the matter should not be dismissed, the hearing officer shall recommend dismissal of the matter.

Section 14. Filing Exceptions. (1) Filing with the office. Any party filing exceptions to a hearing officer's report and recommendation or a response to such exceptions as provided for by statute or administrative regulation shall file the exceptions or response in the record of the case in the office. All such exceptions and responses shall conform to the format for motion memoranda specified in Section 9(6) of this administrative regulation.

(2) Draft order of the secretary. All parties filing exceptions to a hearing officer's report and recommendation shall tender with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The tendered order shall contain a service page listing the current, correct and complete names and addresses of all parties and counsel of record upon whom the cabinet is required to serve the order. Parties may submit proposed orders in electronic form if accompanied by a hard copy.

(3) Good cause exception. The secretary may exempt a party from compliance with subsections (1) and (2) of this section upon a showing of good cause or undue hardship.

Section 15. Filing Transcripts. (1) Transcript to be filed on use. Any party who obtains a transcript of a proceeding before the office and who cites to, quotes from or otherwise relies upon that transcript in any document filed with the office shall file a complete copy of the

transcript in the record in the office, unless a copy of the transcript has been previously filed in the record.

(2) Time for filing. Any party filing a transcript under this section shall file the transcript no later than the date upon which the party first cites to, quotes from or relies upon the transcript in any document filed with the office.

(3) Failure to file transcript. Failure to file any transcript cited, quoted or otherwise relied upon in a document filed with the office shall be grounds for striking all or part of such motion, memorandum, pleading or other document.

Section 16. Agreed Orders. All agreed orders entered into which resolve any claim or part of a claim in a case pending before a hearing officer shall be tendered to the office for acknowledgement by the hearing officer before being presented to the secretary, and shall contain thereon a signature line for the hearing officer. The filing of an agreed order in accordance with this section shall not relieve the parties from compliance with the provisions of Section 11 of this administrative regulation.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held August 26, 1994, at 10 a.m. EDT in G-1, Capital Plaza Tower, Frankfort, Ky. Persons interested in being heard at this hearing shall notify this agency in writing by August 21, 1994. 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 regulations. To ensure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. A transcript of the public hearing will not be made unless a written request for transcript is made in which case the person making the request shall have the responsibility of paying for the transcript. If you do not wish to be heard at the public hearing, you may nevertheless submit written comments on the proposed administrative regulation. These comments must be submitted by no later than 4:30 p.m. EDT on August 26, 1994. Comments received after that time will not be considered. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

CONTACT PERSON: Barbara A. Foster, Chief Hearing Officer, Office of Administrative Hearings, 35-36 Fountain Place, Frankfort, KY 40601, (502) 564-7312.

The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or provisions of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Any individual who requires special accommodations in connection with this proceeding should contact Jane P. Wingate at 35-36 Fountain Place, Frankfort, KY 40601 or call (502) 564-7312 or (502) 564-4973 (telefax) at least one week prior to the date the accommodations will be needed.

REGULATORY IMPACT ANALYSIS

Agency Contact: Barbara A. Foster

(1) Type and number of entities affected: This administrative regulation sets forth practice provisions for administrative hearings conducted by the Natural Resources and Environmental Protection Cabinet, "the cabinet", under the auspices of KRS Chapters 146, 151, 223, 224 and 350 and will serve as a supplement to the existing administrative regulations governing administrative hearings found in 405 KAR 7:091 and 405 KAR 7:092. As such, these regulations will directly pertain to any person interested in or adversely affected by a determination or enforcement action initiated by the cabinet, hereinafter "affected entities". Given the size and complexity of the various environmental programs, it is impossible to accurately determine the number of affected entities. It is worthwhile to note, however, that approximately 950 active formal administrative cases are pending before the Office of Administrative Hearings which will be immediately affected by this administrative practice regulation upon date of adoption.

(a) Direct and indirect costs or savings to those affected:

1. First year: As noted, these regulations serve as a supplement to existing administrative regulations in that it clarifies certain procedures to be used by any person filing an action with the Office of Administrative Hearings. The overall fiscal impact to the affected entities is expected to be negligible. One possible exception will be the establishment of the mediation program in Section 7 of the proposed administrative regulation. The mediation provisions provide an alternative to a formal administrative hearing and if a matter is successfully resolved without the necessity of going to a full administrative hearing, there could be a significant savings to all the parties. In certain instances, however, where mediation is not successful some additional expense could result to the parties. It should be noted that the mediation process does not necessarily entail the services of legal counsel, whereas most administrative hearings would warrant the presence of counsel. Given the novelty of the program, it is difficult to access exactly how much, if any, fiscal impact this alternative dispute resolution process will have on the affected entities.

2. Continuing costs or savings: Other than the mediation program, there should not be any other additional costs or savings sustained by the affected entities.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are not any reporting requirements as such, other than the routine filing of administrative documents in accordance with the requirements of the practice regulations. There will be some new filing of documents in accordance with the requirements of the mediation program.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The overall fiscal impact of the practice regulations in the Office of Administrative Hearings will be virtually negligible. The only exception is the mediation program as discussed above. It is anticipated that the employment of an in-house mediator or use of a mediation service will result in an expenditure of approximately $40,000 or less. Funds for the program are currently budgeted for the next two fiscal years and thus, promulgation of this administrative regulation will not result in any expenditure of funds not already allocated.

2. Continuing costs or savings: Costs for the second year will be approximately the same as the first fiscal year.

3. Additional factors increasing or decreasing costs: The mediation program has the potential of reducing the overall operational costs of the Office of Administrative Hearings in that it will allow the hearing officers to more efficiently schedule formal administrative hearings. If the program performs as expected there could be an actual decrease in the number of time consuming and expensive adjudicatory hearings.

(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 alternatives were considered.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping, or duplication: To a certain extent, the provisions of Section 5 duplicate the provisions of 405 KAR 7:091 and 405 KAR 7:092 regarding the contents of an initiating

document and the information required from a filing party. The proposed administrative regulation, however, does not conflict with any existing administrative regulation or statute.

(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: The duplication noted above proved to be unavoidable in that 405 KAR 7:091 and 405 KAR 7:092 pertain only to administrative actions initiated under the KRS Chapter 350. This regulation, however, pertains to any administrative action filed under any of the statutory chapters administered by the cabinet. In order to insure consistency as to the contents of an initiating document for all administrative hearings, it was necessary to set out the requirements for the proper filing of an initiating document.

TIERING: Was tiering applied? No. Tiering is not applicable to this proposed administrative regulation because under the KRS Chapter administered by the cabinet, these requirements must apply equally to all entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. A. The administration of the surface mining and reclamation enforcement program by the State under the auspices of KRS Chapter 350 is governed by the statutory provisions set forth in Federal Surface Mining Control and Reclamation and Act, PL 95-87. Accordingly, the following federal provisions are applicable: 30 USC 1253, 1255, 30 CFR Parts 724, 730, 731, 732, 733, 735, and 917.

B. The administration of the various environmental provisions arising under KRS Chapters 146, 151, 223, and 224 are not subject to federal statutes or regulations constituting a federal mandate as such. The cabinet's Department for Environmental Protection administers under state authority some programs that have federal counterparts administered by the United States Environmental Protection Agency (EPA). The federal statutes authorize EPA to approve state programs which are consistent with and no less stringent than the federal programs. None of the programs that EPA has delegated to the cabinet requires the promulgation of state regulations governing the procedural aspects of a state administrative hearing.

2. State compliance standards. This administrative regulation sets forth practice provisions for administrative hearings conducted by the Natural Resources and Environmental Protection Cabinet, "the cabinet", under the auspices of KRS Chapters 146, 151, 223, 224 and 350 and will serve as a supplement to the existing administrative regulations governing administrative hearings. As such, this administrative regulation will directly pertain to any person interested in or adversely affected by a determination or enforcement action initiated by the cabinet, and will govern the practice of administrative hearings pending before the Office of Administrative Hearings by clarifying certain procedures set out in other administrative regulations, most notably 405 KAR 7:091, 405 KAR 7:092 and 401 KAR 1:100 (proposed).

3. Minimum or uniform standards contained in the federal mandate. A. The federal Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 USC 1201 et seq. establishes the basis whereby state and federal authorities regulate surface mining and reclamation operations. Title 5 of SMCRA contains the provisions whereby persons aggrieved by an action of the regulatory authority may challenge that action through an adjudicative process. This provision was satisfied by the implementation of 405 KAR 7:091 and 405 KAR 7:092. This administrative regulation is a supplement to these regulatory provisions and is not in response to any federal directive requiring the promulgation of this administrative regulation. The regulation, however, will be subject to review by the Office of Surface Mining and the governing standard is that the regulation must be as effective as the federal program. 30 USC 1253, 1255. It should be noted, however, that the federal mandate does not prescribe specific procedural standards other than it requires that a process be in place by which person having an interest that may be adversely affected may be heard at any significant part of the administrative and judicial process, as well as a process for the proper administration of cases.

B. With respect to the administration of KRS Chapters 146, 151, 223 and 224, there are no minimum or uniform standards contained 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? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part of division of local government this administrative regulation will affect. This administrative regulation will affect any division of local government filing a petition for hearing under KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers and KRS Chapter 224 relating generally to environmental protection, and the administrative regulations promulgated pursuant thereto. This administrative regulation will also affect any division of local government named as a defendant in an administrative complaint filed under those chapters and the administrative regulations promulgated pursuant thereto. This administrative regulation also applies to administrative hearings relating to mining conducted under KRS Chapter 350 and the regulations promulgated pursuant thereto, but it is not expected to affect divisions of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to administrative hearings to which divisions of local government are parties.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimate cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: No effect on expenditures and revenues of divisions of local government that are parties to administrative hearings authorized under KRS Chapters 146, 151, 223 and 224 and the administrative regulations promulgated pursuant thereto is expected, since this administrative regulation is consistent with existing statutory requirements, current administrative practice, the Kentucky Rules of Civil Procedure, and 405 KAR 7:091 and 7:092 governing administrative hearings authorized by KRS Chapter 350.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water

401 KAR 8:651. Repeal of 401 KAR 8:650.

RELATES TO: KRS Chapters 211, 224

STATUTORY AUTHORITY: KRS 211.190(11)

NECESSITY AND FUNCTION: The 1994 Legislative Session of the General Assembly of Kentucky enacted Senate Bill 170 which

directs the Cabinet for Human Resources to provide public health services that include water fluoridation programs for the protection of dental health. 401 KAR 8:650, Supplemental fluoridation, had been administered jointly by the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet. More recently the Cabinet for Human Resources has been playing the primary role in administering this administrative regulation. Pursuant to Senate Bill 170, the Cabinet for Human Resources intends to file emergency administrative regulations to administer the supplemental fluoride program after July 15, 1994. 401 KAR 8:650 will therefore be redundant and unneeded.

Section 1. 401 KAR 8:650, Supplemental fluoridation, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 14, 1994
FILED WITH LRC: July 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed regulation has been scheduled for Wednesday, August 24, 1994 at 1:30 p.m. (ET), in the Auditorium of the State Office Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify John T. Smither in writing at the address noted below by August 19, 1994, of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing and be heard is received by that date, the hearing may be canceled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed regulation. Persons testifying at the hearing are requested to provide the cabinet with a written copy of their testimony, if available. A transcript of the hearing may not be made unless a written request for a transcript is made at least five (5) days before the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Written comments must be received by John T. Smither at the address below no later than the close of business, 4:30 p.m. (ET), August 24, 1994. The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The cabinet will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Smither at the address below before August 19, 1994 between 8 a.m. and 4:30 p.m. (ET).

CONTACT PERSON: John T. Smither, Manager, Drinking Water Branch, Division of Water, Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410.

REGULATORY IMPACT ANALYSIS

Agency Contact: John T. Smither

(1) Type and number of entities affected: This regulation impacts public water systems serving 1500 or more people.

(a) Direct and indirect costs or savings to those affected: This regulation repeals the Division of Water's supplemental fluoride regulation. The fluoride program will be regulated by the Cabinet for Human Resources. All monitoring and reporting costs will be a result of regulation by the Cabinet for Human Resources.

1. First year: All monitoring and reporting costs will be a result of regulation by the Cabinet for Human Resources.

2. Continuing costs or savings: All monitoring and reporting costs will be a result of regulation by the Cabinet for Human Resources.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Water systems will have to submit fluoride reports to the Cabinet for Human Resources.

(2) Effects on the promulgating administrative body: This regulation will relieve the cabinet from receiving daily fluoride data. Monthly data will be received from the Cabinet for Human Resources for purposes of compliance with drinking water primary and secondary fluoride standards.

(a) Direct and indirect costs or savings: This regulation will not cost or save the cabinet anything since monthly operating reports will still be received and processed by the cabinet (although daily fluoride analysis will no longer be reported).

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: No other factors will increase or decrease costs.

(b) Reporting and paperwork requirements: Public water systems will be required to submit daily fluoride readings to the Cabinet for Human Resources rather than this agency. Monthly fluoride information will be furnished to Human Resources and shared with this agency. These factors are a result of a Cabinet for Human Resources regulation which will be filed by July 14, 1994.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative for repealing the regulation would be to not repeal it which would create a conflict with the Cabinet for Human Resource's regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation repeals the Division of Water's supplemental fluoride regulation to avoid a conflict with KRS Chapter 211.

(a) Necessity of proposed regulation if in conflict: This regulation is necessary to avoid a conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This regulation is an effort to harmonize the drinking water regulations with the dental health regulations.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation repeals 401 KAR 8:650, Supplemental fluoridation. Tiering is not appropriate for the repeal of another regulation.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This regulation repeals a regulation which has applied to public water systems. Public water systems are frequently owned or operated by local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation repeals a regulation relating to supplemental fluoride in drinking water for dental health. This program will now be handled by the Cabinet for Human Resources.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will impact local government only to the extent that public water systems will now deal with the Cabinet for Human Resources for the supplemental fluoride program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

There is no federal mandate.

2. State compliance standards. This regulation repeals the Division of Water's regulation for supplemental fluoride for dental health, which has been moved to the Cabinet for Human Resources. This is pursuant to a recently enacted law, Senate Bill 170(1994).

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

401 KAR 48:005. Definitions related to 401 KAR Chapter 48.

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.50, 224.99, 40 CFR Part 258

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-110, 224.40-305, 224.43-340, 224.50-824, 224.50-832

NECESSITY AND FUNCTION: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the cabinet to promulgate administrative regulations for the management of solid, special, and hazardous wastes. This chapter establishes technical requirements applicable to the management of solid waste. This administrative regulation defines terms used in the administrative regulations of this chapter.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224 or other administrative regulations of 401 KAR Chapter 48, or otherwise specifically indicated by context, terms in KRS Chapter 224 and 401 KAR Chapter 48 shall have the meanings given in this administrative regulation.

(1) "Active life" means the period from the initial receipt of waste at a waste site or facility until the cabinet receives certification of final closure.

(2) "Administrator" means the administrator of the United States Environmental Protection Agency, or his designee.

(3) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(4) "Application" means the form approved by the cabinet for applying for a permit, including any additions, revisions or modifications and any narrative and drawings required by 401 KAR Chapters 47 or 48.

(5) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(6) "Bird hazard" means an increase in the likelihood of bird or aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(7) "Cation exchange capacity" means the sum of exchangeable cations a soil can absorb expressed in milliequivalents per 100 grams of soil as determined by sampling the soil to the depth of cultivation or solid waste placement, whichever is greater, and analyzing by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils.

(8) "Cell" means a portion of any landfill which is isolated, usually by means of an approved barrier.

(9) "Certification" means a statement of professional opinion based upon knowledge and belief.

(10) "Closure care" or "postclosure" means the routine care, maintenance, monitoring, and any required corrective action of a special waste or solid waste disposal site or facility following certification of closure until the applicable requirements are met.

(11) "Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activities.

(12) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents into the environment which has the potential for endangering human health and the environment. Financial planning to identify resources for initiation of such action is a part of contingency plan development.

(13) "Cover material" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(14) "Director" means the director of the cabinet's Division of Waste Management.

(15) "Disease vector" means all insects, birds or gnawing animals such as rats, mice or ground squirrels, which are capable of transmitting pathogens.

(16) "Explosive gas" means methane (CH_4).

(17) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units, such as one (1) or more landfills, surface impoundments, or combination of them.

(18) "Facility structures" means any buildings and sheds or utility or drainage lines on the solid waste site or facility.

(19) "Final closure" means the approved closure of a solid waste site or facility in accordance with 401 KAR 30:031, 401 KAR 47:030, and the applicable requirements of 401 KAR 48:060, 401 KAR 48:090, 401 KAR 48:170, or 401 KAR 48:200.

(20) "Floodplain" means areas adjoining inland waters that are inundated by the base flood, unless otherwise specified in 401 KAR 30:031 or 401 KAR 47:030, and includes:

(a) "100-year flood plain" means any land area which is subject to a one (1) percent or greater chance of flooding in any given year from any source.

(b) "100-year flood" means a flood that has a one (1) percent chance of being equalled or exceeded in any given year.

(c) "Floodway" means the channel of the waterway, stream or river and that portion of the adjoining floodplain which provides for passage of the 100-year flood flow without increasing the floodwater depth across the 100-year floodplain by more than one (1) foot.

(21) "Food chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(22) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike and the surface of the waste contained therein.

(23) "Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

(24) "Groundwater" means water that is in the zone of perennial saturation. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the perennially unsaturated zone, and from water held in chemical or electrostatic bondage. It is synonymous with the term "phreatic water".

(25) "Groundwater table" means the upper boundary of the saturated zone in which the hydrostatic pressure of the groundwater is equal to the atmospheric pressure.

(26) "Holocene" means the most recent epoch of the quaternary period, extending from the end of the Pleistocene to the present.

(27) "Karst terrain" means a type of topography where limestone,

dolomite or gypsum is present and is characterized by naturally occurring closed topographic depressions or sinkholes, caves, disrupted surface drainage, and well developed underground solution channels formed by dissolution of these rocks by water moving underground.

(28) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing or solid waste landfill unit.

(29) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from waste.

(30) "Liner" means a continuous layer of natural or man-made material, beneath or on the sides of a waste site or facility, including but not limited to a waste pile, surface impoundment, landfill, or landfill cell, or beneath or on the sides of a waste site or facility which restricts the movement of the wastes, waste constituents, or leachate.

(31) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at twenty-five (25) degrees Celsius and atmospheric pressure.

(32) "Monitoring" means the act of systematically inspecting and collecting data on operational parameters or on the quality of the air, soil, groundwater, or surface water.

(33) "Monitoring well" means a well used to obtain water samples for water quality and quantity analysis and groundwater levels.

(34) "Open burning" means the combustion of any material or solid waste without:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products.

(35) "Operational plan" means the approved plan of operations filed with the cabinet which describes the method of operation that the permittee will use in the treatment, storage, and disposal of waste.

(36) "Operator" means any person responsible for overall operation of an on-site or off-site waste facility, including any private contractor conducting operational activities at a federal facility.

(37) "Owner" means any person who owns an on-site or off-site waste facility, or any part of a facility.

(38) "Perennial stream" means a stream or that part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream".

(39) "Permit" means the authorization or other control document issued by the cabinet to implement the requirements of the waste management administrative regulations. The term "permit" includes "permit-by-rule", "registered permit-by-rule", "research, development, and demonstration permit", and "emergency permit". However, the term "permit" does not include "draft permit" or "proposed permit".

(a) "Emergency permit" means a permit issued by the cabinet to temporarily manage, process, or dispose of a solid waste in accordance with the provisions of Section 2 of 401 KAR 47:150.

(b) "Permit-by-rule" means authorization allowing certain classes of sites or facilities, as specified in 401 KAR 47:150, to manage waste consistent with 401 KAR Chapters 30, 47, and 48, without submission of a registration or permit application to the cabinet.

(c) "Registered permit-by-rule" means that certain classes of solid waste sites or facilities, as specified in 401 KAR 47:080, have a permit as provided in 401 KAR 47:110 or 401 KAR 48:200.

(d) "Research, development, and demonstration permit" means a solid waste treatment or disposal facility using innovative and experimental technology as specified in 401 KAR 47:150.

(40) "Permittee" means any person holding a valid permit issued by the cabinet to manage, treat, store, or dispose of waste.

(41) "Personnel" or "facility personnel" means all persons who work at or oversee the operations of a waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the waste management administrative regulations.

(42) "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.

(43) "Run-off" means any rainwater, leachate, or other liquid that drains overland from any part of a facility.

(44) "Run-on" means any rainwater, leachate, or other liquid that drains overland onto any part of a facility.

(45) "Scavenging" means the removal of waste materials from a waste management site or facility in a manner deemed by the cabinet to be dangerous to the health and safety of any person.

(46) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the waste facility or activity.

(47) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant or any other waste having similar characteristics and effects.

(48) "Solid waste site or facility" means any place at which solid waste is managed, processed or disposed by landfilling, incineration, landfarming or any other method. The term includes the following:

(a) "Construction/demolition debris landfill" means a solid waste site or facility for the disposal of solid waste resulting from the construction, remodeling, repair, and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance, and seasonal and storm related cleanup. The technical requirements for construction/demolition debris landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:060.

(b) "Collection box" shall have the meaning specified in KRS 224.01-010.

(c) "Contained landfill" means a solid waste site or facility that accepts for disposal solid waste. The technical requirements for contained landfills are found in 401 KAR 47:080, 401 KAR 48:050, and 401 KAR 48:070 to 401 KAR 48:090.

(d) "Convenience center", as defined at KRS 224.01-010.

(e) "Disposal facility" means a facility or part of a facility at which solid waste is intentionally placed into or on any land or water and at which waste will remain after closure.

(f) "Incinerator" means any enclosed device using controlled flame combustion for burning solid waste.

(g) "Injection well" means a well into which fluids are injected to achieve subsurface emplacement.

(h) "Landfarming facility" means a facility for land application of sludges or other solid waste by any method for purposes of disposal. It can be on any piece or pieces of land and may improve the physical and chemical qualities of the land for agricultural purposes, but does not alter the topography of the application area as revealed by contours and will not disturb the soil below three (3) feet from the surface.

(i) "Management facility" means a facility or part of a facility at which solid waste is held for a temporary period, at the end of which solid waste is processed, disposed or managed elsewhere.

(j) "Miscellaneous unit" means a solid waste management unit where waste is disposed of and that is not a container, tank, surface impoundment, pile, landfarming unit, landfill, incinerator, underground injection well with appropriate technical standards under 40 CFR Part 146, or unit eligible for a research, development, and demonstration permit under Section 3 of 401 KAR 47:150.

(k) "Municipal solid waste disposal facility", as defined at KRS 224.01-010.

(l) "Pile" or "waste pile" means any noncontainerized accumulation of nonflowing solid waste that is used for processing or manage-

ment.

(m) "Processing facility" means a facility or part of a facility using any method, technique or procedure, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for handling or reduced in volume.

(n) "Recycling center" means a facility or a part of a facility at which solid waste is received and managed in a manner amenable for the recovery of material or energy. This term does not include recycling facilities.

(o) "Recycling facility" means a facility or a part of a facility at which solid waste is processed to reclaim material or energy from the solid waste.

(p) "Residual landfill" means a facility for the disposal of specific solid wastes, including special waste, which is located, designed, constructed, operated, maintained, and closed in conformance with 401 KAR 30:031 and 401 KAR 47:030 and which receives a case-by-case design review by the cabinet.

(q) "Sanitary landfill" means a facility for the disposal of solid waste that complies with 401 KAR 30:031 and 401 KAR 47:030.

(r) "Surface impoundment" means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(s) "Tank" means a stationary device designed to contain an accumulation of leachate or liquid solid waste which is constructed primarily of nonearthen materials (for example, wood, concrete, steel, or plastic) which provide structural support.

1. "Aboveground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

2. "Component" means either the tank or ancillary equipment of a tank system.

3. "Inground tank" means a device meeting the definition of "tank" in this subsection whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

4. "Onground tank" means a device meeting the definition of "tank" in this subsection and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

5. "Tank system" means a solid waste tank and its associated piping, ancillary equipment, and containment system.

6. "Underground tank" means a device meeting the definition of "tank" in this subsection whose entire surface area is totally below the surface of and covered by the ground.

7. "Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of managing or processing solid waste without posing a threat of release of waste to the environment.

(t) "Transfer facility" shall have the meaning specified in KRS 224.01-010.

(u) "Unit" or "solid waste unit" means a contiguous area of land on or in which solid waste is placed, or the largest area in which there is significant likelihood of mixing waste constituents in the same area. Examples of solid waste units include a surface impoundment, a waste pile, a land processing area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(v) "Wastewater treatment unit" means a tank which is part of a wastewater treatment facility which is subject to administrative regulation under either Section 402 or Section 307(b) of the CWA of 1972 and which receives, treats, stores, generates, or accumulates influent wastewater or receives, manages, processes generates or accumulates wastewater treatment sludge, either of which is a solid waste.

(w)1. "Inert landfill" means a facility for the proper disposal of inert, nonsoluble and nonputrescible solid waste, including construction materials, certain industrial or special wastes, and other waste material with specific approval from the cabinet. Certain putrescible wood product wastes (such as cardboard, paper, sawdust, woodchips, and tree trimmings) may be considered by the cabinet for disposal at inert landfills.

2. "Residential landfill" means a facility for the proper disposal of solid waste including residential wastes, commercial wastes, institutional wastes, and those sludges, industrial or special wastes with specific approval from the cabinet.

(48) "State" means any of the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands or Guam but does not include any foreign country.

(49) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(50) "Vessel" means any watercraft used or capable of being used as a means of transportation on the water.

(51) "Washout" means the carrying away of waste by waters as a result of flooding.

(52) "Well" means any shaft or pit dug or bored into the earth, generally of cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

Section 2. References. (1) The following documents are hereby incorporated by reference:

(a) 40 CFR 260.11 as of February 21, 1991; and

(b) Appendix X of 40 CFR 261 as of January 14, 1985.

(2) The documents referenced in subsection (1) of this section may be obtained from the Division of Waste Management, 14 Reilly Road, Frankfort, KY 40601, (502)564-6716, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 8 a.m.

PUBLIC HEARING: A public hearing to receive comments on this proposed administrative regulation has been scheduled for Thursday, August 25, 1994, at 10 a.m. eastern time in the auditorium of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing at the address noted below, by August 20, 1994 of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by August 20, 1994. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than 4:30 p.m. eastern time on August 25, 1994. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or

the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as an interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by August 20, 1994.

CONTACT: James Hale, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: James Hale

(1) Type and number of entities affected: This proposed administrative regulation is being established pursuant to KRS 13A.222(4)(e). The terms defined in and the requirements of this administrative regulation already exist at 401 KAR 30:010. This administrative regulation is being proposed for administrative purposes only. Adoption of this administrative regulation will not impact any entity.

(a) Direct and indirect costs or savings to those affected:

1. First year: This administrative regulation will not impact anyone. It is being proposed solely for administrative purposes in compliance with KRS 13A.222(4)(e).

2. Continuing costs or savings: None. See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None. See above.

(b) Reporting and paperwork requirements: None. See above.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will not impact the cabinet. It is being proposed solely for administrative purposes in compliance with KRS 13A.222(4)(e).

2. Continuing costs or savings: None. See above.

3. Additional factors increasing or decreasing costs: None. See above.

(b) Reporting and paperwork requirements: None. See above.

(3) Assessment of anticipated effect on state and local revenues: None. See above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Under the advise of LRC staff attorneys, the cabinet concluded that there was no alternative to the proposal of this administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may conflict, overlap or duplicate: No statutes, administrative regulations, or government policies conflict with this administrative regulation. The provisions of this regulation are duplicated under 401 KAR 30:010.

(a) Necessity of proposed regulation if in conflict: This administrative regulation is necessary to comply with LRC staff interpretation of KRS 13A.222(4)(e). This administrative regulation does not conflict with 401 KAR 30:010, but it does duplicate provisions of that administrative regulation.

(b) If in conflict, was an effort made to harmonize the proposed regulation with conflicting provisions: This administrative regulation is required by LRC staff in compliance for compliance with KRS 13A.222(4)(e).

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This administrative regulation defines terms and standard testing procedures for the solid waste program of the Natural Resources and Environmental Protection Cabinet. To assure consistency in program administration, tiering was not employed.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal statute or administrative regulations constituting the federal mandate.

2. State compliance standards: This proposed administrative administrative regulation is being established pursuant to KRS 13A.222(4)(e). The terms defined in and the requirements of this administrative regulation already exist in 401 KAR 30:010. This regulation is proposed for administrative purposes only.

3. Minimum or uniform standards contained in the federal mandate: Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection

401 KAR 100:010. General administrative hearing practice provisions.

RELATES TO: KRS 146.200 to 146.360, 146.990, 151.182, 151.184, 151.297, 151.990, Chapter 223, Chapter 224

STATUTORY AUTHORITY: KRS Chapter 13A, 151.125, 151.182, 151.184, 151.186, 151.297, 224.10-100,224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-470, 224.40-310

NECESSITY AND FUNCTION: KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection authorize the cabinet to conduct administrative hearings on violations of those chapters and administrative regulations promulgated pursuant thereto, and on orders and final determinations of the cabinet made under those chapters and the administrative regulations promulgated pursuant thereto. This administrative regulation establishes procedures for conducting those administrative hearings, and repeals 401 KAR 40:030 and 400 KAR 1:050, both relating to procedures for conducting administrative hearings.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection, including those administrative hearings pending at the time this administrative regulation becomes effective. This administrative regulation governs administrative hearings authorized by those chapters on violations of those chapters and administrative regulations promulgated pursuant thereto, and on orders and final determinations of the cabinet made under those chapters and the administrative regulations promulgated pursuant thereto.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. General Provisions for Conducting Administrative Hearings. (1)(a) Hearings generally. All administrative hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the secretary shall be binding against any party to the administrative hearing leading to the final order. A party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. An independent hearing officer shall preside at the administrative

hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice and Section 2 of this administrative regulation. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 relating to service of process, computation of time and filing of documents, and 400 KAR 1:040 relating to administrative discovery shall apply to cases before the cabinet, consistent with KRS Chapters 146, 151, 223, and 224 and the administrative regulations promulgated pursuant thereto. The hearing officer shall permit any party to represent that party's interests, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.

(b) Evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under rules of evidence, evidence not admissible thereunder may be admitted, except where designated as confidential by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken by the hearing officer of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

(2) Hearing officer's duties. The hearing officer shall in the hearing officer's discretion:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Hold prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Take any other action authorized by this administrative regulation, KRS Chapters 146, 151, 223, 224 and the administrative regulations promulgated pursuant thereto; and

(i) Make or recommend decisions or reports in accordance with KRS Chapters 146, 151, 223, 224 and the administrative regulations promulgated pursuant thereto.

(3) Prehearing conference. A hearing officer may order a prehearing conference:

(a) To simplify and clarify issues;

(b) To receive stipulations and admissions;

(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(d) For any other purposes as may be appropriate, including but not limited to summary disposition of the case.

(4) Summary disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:

(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:

1. There is no disputed issue as to any material fact; and

2. The moving party is entitled to a summary disposition as a matter of law.

(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. The hearing officer shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

(5) Hearing officer's report.

(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified at the time of the granting of the extension. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record. The parties may file exceptions and responses to the exceptions as provided under KRS 151.184 and 224.10-440. There shall be no other or further submissions.

(b) The hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty recommended in the report.

(6) Secretary's order.

(a) The secretary shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 4. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representative of a party or interested person and Office of Administrative Hearings personnel involved or who may reasonably be expected to become involved in the decision making process of an administrative hearing, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Communications concerning case status or advice concerning compliance with procedural requirements are not prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing. Oral communications made in violation

of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record. Written communications made in violation of this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties, who shall be given an opportunity to respond in writing.

(b) Sanctions. The hearing officer, who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why the offending party's claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking such sanctions against other offending persons as appropriate.

(2) Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 5. Service. (1) Documents required to be served, including administrative summonses, shall be served by one (1) of the following methods:

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place and manner of service. To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) Service may be made upon a person issued a permit or registration by the cabinet, upon a person specified as an operator in the permit or registration application, or upon a person certified by the cabinet or applying for certification, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit or registration application (at the address specified in the permit, at the permanent address for the permittee or operator specified in the permit or registration application, or at any new address that has been specified in writing by the permittee or operator), or the certified operator or the person requesting certification (at the address specified in the certification, at the permanent address for the certified operator specified in the certification request, or at any new address that has been specified in writing by the operator).

(2) Service shall be effective upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the Office of Administrative Hearings must be served by the filing party on all other parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case. Service of any document relating to the proceeding shall be made upon the attorney of record in addition to any other service specifically required by law or by order of the cabinet.

(5) Service shall be made upon the cabinet by serving the commissioner of the Department of Law and shall be effective upon receipt by the Department of Law.

Section 6. Administrative Summons and Public Notice of Hearing. Upon receipt of an initiating document, the Office of Administrative Hearings shall promptly serve in accordance with 400 KAR 1:030 and Section 5 of this administrative regulation, a copy of the document upon all parties designated to be served along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. If appropriate and at the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and administrative regulations involved.

Section 7. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the Office of Administrative Hearings when the document is received and stamped by the office.

(2) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet will be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer. When an order of the secretary has become final, the hearing officer in his discretion may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party. The substitution of true copies of exhibits or any part may be required by the hearing officer in his discretion as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing before the Office of Administrative Hearings shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing. The successors of the person shall likewise promptly inform the Office of Administrative Hearings of their interest in the matters and state their addresses and telephone numbers. If a person fails to furnish a record address and telephone number as required, that person will not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of

Administrative Hearings employees will be at rates which cover the cost of staff time, machine use and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts will be at rates established by the contract.

Section 8. Time. (1) Computation of time for the initiation of an administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 446.030 and 400 KAR 1:030.

(2) The time for filing or serving any document may be extended by a hearing officer except for the time for filing a petition for an administrative hearing under KRS 151.182(2) or 224.10-420(2) or if an extension is contrary to law or administrative regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section 9. Subpoenas. The Office of Administrative Hearings shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings to be held before or at the taking of depositions to be held before other officers. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the Office of Administrative Hearings or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section 10. Location of Administrative Hearings. Administrative hearings shall be held in Frankfort at the location designated by the hearing officer unless an alternative location is agreed upon by the parties or authorized by KRS 224.40-310(5)(e).

Section 11. Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding. A petitioner shall set forth a statement setting forth the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or

2. Has an interest which is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection do not apply, the hearing officer shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or, if desired, in a limited capacity. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing officer.

(4) Consolidation. When proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Administrative Hearings Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing and may seek the remedies identified in subsection (2) of this section whenever:

1. It has reason to believe that a violation of KRS Chapters 146, 151, 223, 224, the administrative regulations promulgated pursuant thereto, or a permit, registration or certification condition has occurred or is occurring; or

2. The cabinet has reason to believe remedies should be sought or an order should be entered against any person to protect the environment or the health and safety of the public.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek a combination of the following:

(a) Permit revocation, termination, denial, modification or suspension;

(b) Bond and other financial assurance forfeiture;

(c) Civil penalties;

(d) A determination, where expressly authorized by statute, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) Cost recovery where expressly authorized by statute; or

(f) Any other relief to which it may be entitled by KRS Chapters 146, 151, 223, 224 or the administrative regulations promulgated pursuant thereto.

(3) Procedures for administrative hearings initiated by the cabinet.

(a) Filing of administrative complaint. Contents. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the Office of Administrative Hearings incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief; and

2. A request for specific relief.

(b) Answer or responsive pleading. The person named in an administrative complaint shall file with the Office of Administrative Hearings an answer or responsive pleading within thirty (30) days of service of the administrative complaint which shall contain:

1. A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; and

2. Any defenses to each claim for relief.

(c) Amendments. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The person named in the administrative complaint shall have ten (10) days from the filing of an administrative complaint amended as a matter of right or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend the administrative complaint, the time for an answer to be filed shall be set forth in the order granting the motion.

(4) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense. A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) In a proceeding where the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be

deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 13. Review of Cabinet Orders and Final Determinations. (1) Who may file. A person who considers himself aggrieved by an order or final determination of the cabinet may file a petition for review of the order or final determination pursuant to this section. This section also applies to petitions for review of a draft permit for construction or expansion, when the expansion results in substantial additional capacity, a waste disposal facility, made pursuant to KRS 224.40-310(6).

(2) The petition for review shall be filed with the Office of Administrative Hearings within thirty (30) days after the petitioner has had actual notice of the order or final determination complained of, or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of petition. The petition for review shall contain:

(a) A statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief;

(d) If the petition challenges an order or final determination on a permit, the name of the permittee and the permit number; and

(e) Other relevant information.

(4) Answer or responsive pleading. The respondents shall file an answer or other responsive pleading within thirty (30) days of service of the petition specifically admitting or denying facts or alleged errors stated in the petition and setting forth any other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The respondents shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) days period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that the person has waived the right to an administrative hearing and dismissing the petition.

(9) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 14. Procedures for Abate or Alleviate Orders. (1) In general. If pursuant to KRS 224.10-410, the secretary issues an order to abate or alleviate, the cabinet shall provide the person to whom the order was issued an opportunity to be heard. The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

(2) Notice.

(a) Upon issuance of an order to abate or alleviate under the provisions of KRS 224.10-410, the secretary shall file with the Office of Administrative Hearings a copy of the order.

(b) Upon filing an order to abate or alleviate, the Office of Administrative Hearings shall issue an administrative summons pursuant to Section 6 of this administrative regulation and shall set the time and place for an administrative hearing to be held not more than ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(3) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with Section 3 of this administrative regulation. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order to abate or alleviate. The person named in the order to abate or alleviate shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated or alleviated.

(6) Default. Upon notification by the person named in the order to abate or alleviate that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued.

(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order to abate or alleviate.

Section 15. Procedures for Orders for Remedy under KRS 151.297. (1) In general. If pursuant to KRS 151.297, the secretary issues an order for remedy, the cabinet shall provide the person to whom the order was issued an opportunity to be heard. The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

(2) Notice.

(a) Upon issuance of an order for remedy under the provisions of KRS 151.297, the secretary shall file with the Office of Administrative

Hearings a copy of the order.

(b) Upon filing an order for remedy, the Office of Administrative Hearings shall issue an administrative summons pursuant to Section 5 of this administrative regulation and shall set the time and place for an administrative hearing to be held not more than five (5) working days from the date the order for remedy was signed by the secretary.

(3) Response.

(a) The person named in the order for remedy shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 151.297.

(b) In lieu of a response, the person named in the order for remedy may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with Section 3 of this administrative regulation. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the order for remedy. The person named in the order for remedy shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 151.297, or that the condition or activity has been discontinued, abated or alleviated.

(6) Default. Upon notification by the person named in the order for remedy that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order for remedy stands as issued.

(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order for remedy.

Section 16. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 151.186 or 224.10-470 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. Whenever a matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report recommending procedures to be followed in order to comply with the court's order. The hearing officer will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

Section 17. 400 KAR 1:050, Administrative rules of procedure, burden of proof, is hereby repealed.

Section 18. 401 KAR 40:030, Hearings, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1994, at 9 a.m. local time in the Auditorium, Capital Plaza Tower, Frankfort, Kentucky. Persons interested in being heard at this hearing shall notify this agency in writing by August 21, 1994 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. To assure an accurate record, the Cabinet requests that each person testifying at the hearing provide the Cabinet with a written copy of his or her testimony. No transcript or recording will automatically be taken of the hearing unless a written request for a transcript or recording is made, in which case the person making the request shall have the responsibility of paying for same. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on August 26, 1994. Comments received after that time will not be considered. Written notification of intent to be heard at the public hearing and written comments must be submitted to the following contact person: Kathryn M. Hargraves, Department of Law, Fifth Floor Capital Plaza Tower, Frankfort, Kentucky 40601, (502) 564-5576.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kathryn M. Hargraves

(1) Type and number of entities affected: This administrative regulation establishes procedures for conducting adjudicatory administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection. The procedures affect petitions for hearing on orders and final determinations of the cabinet under those statutes, as well as administrative complaints filed by the cabinet under those statutes. No impact on persons filing petitions for hearing or named as defendants in administrative complaints is expected, since this administrative regulation is consistent with existing statutory requirements, current administrative practice, the Kentucky Rules of Civil Procedure, and 405 KAR 7:091 and 7:092 governing administrative hearings authorized by KRS Chapter 350.

(a) Direct and indirect costs or savings to those affected:

1. First year: No additional costs or savings are expected.

2. Continuing costs or savings: None expected.

3. Additional factors increasing or decreasing costs: None expected.

(b) Reporting and paperwork requirements: This administrative regulation imposes filing and service requirements for persons engaged in administrative adjudication before the cabinet, but those requirements are not additional to or more stringent than current filing and service requirements, and they are consistent with existing statutory requirements, current administrative practice, the Kentucky Rules of Civil Procedure, and 405 KAR 7:091 and 7:092 governing administrative hearings authorized by KRS Chapter 350.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings are expected.

2. Continuing costs or savings: None are expected.

3. Additional factors increasing or decreasing costs: None expected.

(b) Reporting and paperwork requirements: This administrative regulation imposes filing and service requirements for the cabinet when engaged in administrative adjudication, but those requirements are not additional to or more stringent than current filing and service requirements, and they are consistent with existing statutory requirements, current administrative practice, the Kentucky Rules of Civil Procedure, and 405 KAR 7:091 and 7:092 governing administrative hearings authorized by KRS Chapter 350.

(3) Assessment of anticipated effect on state and local revenues:

None expected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The procedures are outlined in existing statutes, and the cabinet does not have the power to alter those statutory requirements. In addition, by being consistent with current administrative practice, the Kentucky Rules of Civil Procedure and 405 KAR 7:091 and 7:092 governing administrative hearings authorized by KRS Chapter 350, the cabinet believes the public will be better served than by differing requirements.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied because procedural requirements should be the same for all persons engaged in administrative adjudication.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. The cabinet's Department for Environmental Protection administers under state statutes some programs that have federal counterparts administered by the U.S. Environmental Protection Agency (EPA). The federal statutes authorize EPA to approve state programs which are consistent with and no less stringent than the federal programs. However, none of the programs EPA has delegated to the cabinet require adjudicatory administrative hearings to have certain procedural requirements.

2. State compliance standards. This administrative regulation establishes procedures for conducting adjudicatory administrative hearings authorized by KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers, and KRS Chapter 224 relating generally to environmental protection. The procedures affect petitions for hearing on orders or final determinations of the cabinet under those statutes and the administrative regulations promulgated pursuant thereto, as well as administrative complaints filed by the cabinet under those statutes administrative regulations promulgated pursuant thereto.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part of division of local government this administrative regulation will affect. This administrative regulation will affect any division of local government filing a petition for hearing under KRS Chapter 146 relating to wild rivers, KRS Chapter 151 relating to water resources, KRS Chapter 223 relating to water plant operators and water well drillers and KRS Chapter 224 relating generally to environmental protection, and the administrative regulations promulgated pursuant thereto. This administrative regulation will also affect any division of local government named as a defendant in an administrative complaint filed under those chapters and the administrative regulations promulgated pursuant thereto.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to administrative lawsuits to which divisions of local government are parties.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimate cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: No impact on divisions of local government filing petitions for hearing or named as defendants in administrative complaints is expected, since this administrative regulation is consistent with existing statutory requirements, current administrative practice, the Kentucky Rules of Civil Procedure, and 405 KAR 7:091 and 7:092 governing administrative hearings authorized by KRS Chapter 350.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:001. Definitions for 405 KAR Chapter 5.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.

(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.

(3) "Acid-forming materials" means earth materials that contain sulfide minerals or other minerals which, if exposed to air, water or weathering processes, form acids that may create acid drainage.

(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas and processing plants.

(5) "Backfill" means excavated overburden material used to recontour a mined area.

(6) "Cabinet" is defined in KRS 350.010.

(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce run-off velocity for deterring erosion.

(8) "Clay" means a sedimentary rock which becomes plastic when wet and has no well defined or developed partings along bedding planes, although it may display bedding.

(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.

(10) "Critical habitat" means the specific areas within the geographic area, occupied by a threatened or endangered species, on which are found those physical or biological features essential to

the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographic area occupied by the species essential for the conservation of the species. Critical habitat areas are designated lands.

(11) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or legumes, and includes: row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to, or an integral part of, these operations is also included for purposes of this land use category.

(12) "Department" means the Kentucky Department for Surface Mining Reclamation and Enforcement.

(13) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released and processing plant and stockpile areas have been moved.

(14) "Diversion ditch" means a channel constructed to direct water from one (1) location to another.

(15) "Division" means the Division of Field Services of the Kentucky Department for Surface Mining Reclamation and Enforcement.

(16) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, $CaMg\ (Co_3)_2$. Many limestones contain small amounts of Dolomite; however, the term Dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.

(17) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.

(18) "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two or more different habitat types occurring in close proximity to each other. Where two (2) habitats meet is referred to as an "edge".

(19) "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(20) "Ephemeral stream" means a stream which only flows in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(21) "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(22) "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: woodlots or forested areas, shrub-scrub areas, grass-legume or open areas, and wetland or open water areas arranged in a manner as to promote edge effect for wildlife.

(23) "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.

(24) "Fluorspar " means an ore of the mineral Fluorite CaF_2. This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.

(25) "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees.

(26) "Fragile lands" means areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged by mineral operations. Examples of fragile lands include uncommon geologic formations, paleontological sites, national natural landmarks, valuable habitats for fish or wildlife, areas where mining may result in flooding, critical habitats for endangered or threatened species of animals or plants, wetlands, environmental corridors containing a concentration of ecologic and aesthetic features, state-designated nature preserves and wild rivers, and areas of recreational value due to high environmental quality.

(27) "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(28) "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate.

(29) "Ground cover" means the area of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(30) "Groundwater" means water which is in the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface. It is differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.

(31) "Growing season" means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(32) "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.

(33) "Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include properties listed on or eligible for listing on a State or National Register of Historic Places, national historic landmarks, archaeological sites, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

(34) "Hollowfill" means a fill structure placed in a hollow where the side slopes of the existing hollow, measured at the steepest point, are greater than twenty (20) degrees or the average slope of the profile of the hollow, from the toe of the fill to the top of the fill, is greater than ten (10) degrees.

(35) "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, run-off, evaporation, and changes in ground and surface water storage.

(36) "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of applicable state laws and administrative regulations in a mineral operation; which condition, practice, or violation could reasonably be expected to cause substantial, physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

(37) "Impoundment" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(38) "Industrial/commercial land use" means lands used for:

(a) The extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products; and heavy and light manufacturing facilities. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included; or

(b) The retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation is also included.

(39) "Intermittent stream" means:

(a) A stream, or reach of stream, that drains a watershed of one (1) square mile or more but does not flow continuously throughout the calendar year; or

(b) A stream, or reach of stream, that is below the local water table for at least some part of the year, and obtains its flow from both surface water and groundwater discharge. This term does not include ephemeral streams.

(40) "Land use" means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

(41) "License" means an authorization issued to a person, partnership or corporation to conduct mineral operations under their permit.

(42) "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral Calcite $CaCO_3$. However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly Calcite or Dolomite, but may contain small amounts of iron-carbonates (Siderite).

(43) "Mast" means nuts, acorns, and fruit produced by certain woody plant species.

(44) "Mineral operation" means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this Title. This term does not include coal mining, tar sand mining or oil shale mining.

(45) "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

(46) "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(47) "Natural drainways" means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

(48) "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of mineral operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, but not limited to, areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(49) "Noxious plants" means species that have been included on state and federal lists of noxious plants.

(50) "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(51) "Outstanding resource waters" means surface waters designated by the cabinet, pursuant to 401 KAR 5:031, Section 7.

(52) "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to, or an integral part of, these operations is also included.

(53) "Perennial stream" means a stream, or stream reach, that flows continuously during all of the calendar year as a result of groundwater discharge or surface run-off.

(54) "Permanent impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dugout, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(55) "Permit" means written approval issued by the cabinet to conduct mineral operations.

(56) "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by mineral operations under that permit. The permit area shall also include all areas overlying underground workings.

(57) "pH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

(58) "PLS" means pure live seed.

(59) "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 from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(60) "Recreation land use" means land used for public or private leisure time use, including developed recreation facilities such as, parks, camps, and amusement areas, as well as areas for less intensive uses such as, hiking, canoeing, and other undeveloped recreational uses.

(61) "Residential land use" means tracts employed for single and multifamily housing, mobile home parks, and other residential lodgings. Also included, is land used for support facilities such as, vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(62) "Roads" means haul roads and access roads constructed, used, reconstructed, improved or maintained for use in mining and stockpiling finished products, within permit boundaries.

(63) "Run-off" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

(64) "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by engineering practices.

(65) "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

(66) "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(67) "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(68) "Significant, imminent environmental harm to land, air, or water resources" means a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.

(b) An environmental harm is imminent if a condition, practice, or violation exists which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.

(c) An environmental harm is significant, if that harm is appreciable, and not immediately reparable.

(69) "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance. It may also be expressed as a percent or in degrees.

(70) "Soil horizons" means contrasting layers of soil parallel, or nearly parallel to, the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4)

master soil horizons are:

(a) "A horizon". The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is then most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon". The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most commonly differentiated from the overlying A horizon by a lighter color and generally measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon". The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.

(71) "Spoil" means overburden which has been removed during mineral operations.

(72) "Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, riprapping, or by vegetation.

(73) "Stream buffer zone" means an area of forest or field left untouched and undisturbed by the mineral operator during mining, including haul road construction.

(74) "Strip mining" is defined in KRS 350.010.

(75) "Surface disturbance of dredging river or creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(76) "Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including, hoist and ventilating ducts, areas used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

(77) "Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger, are not considered to be surface waters of the Commonwealth.

(78) "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a .45 micron filter.

(79) "Temporary mineral operation" means a mineral operation that operates for six (6) months or less at a location.

(80) "Threatened and endangered species" means those species of plants or animals listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.), or those species protected by similar state statutes.

(81) "Topsoil" means the A and E horizon layers of the four (4) master soil horizons.

(82) "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(83) "Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurried or otherwise transported from the processing facilities or preparation plants of any kind.

(84) "Water table" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

(85) "Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(86) "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substance that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(87) "Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS Chapter 146. A wild river shall be free flowing with its scenic vistas and shorelines relatively unchanged or disturbed by man, and shall be pleasing to the eye.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface

disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation provides for the defining of certain essential terms used in 405 KAR Chapter 5.

(a) Direct and indirect costs or savings to those affected:

1. First year: Since this is strictly a definition regulation, there are no costs or savings to those affected.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since this is strictly a definition regulation, there are no costs or savings to the administrative body.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:015. General provisions.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions which apply to this chapter with regard to applicability, conflicting provisions, severability, obligations of mineral permittees, and the need for a preliminary walk.

Section 1. Applicability. (1) This administrative regulation designates 405 KAR Chapter 5 as applicable to mineral operations and any lands used, disturbed or redisturbed, in connection with, or to facilitate those mineral operations, or any other activity related to mineral operation development conducted on or after the effective date of these administrative regulations.

(2) Mineral operations subject to 405 KAR Chapter 5, include: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining.

(3) Except for the provision of Section 4(2) of this administrative regulation, 405 KAR Chapter 5 does not apply to the mining of coal.

Section 2. Conflicting Provisions. The provisions of 405 KAR Chapter 5 are to be construed as being compatible and complimentary with each other. If provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 3. Severability. If any provision or administrative regulation of 405 KAR Chapter 5 is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 4. General Obligations of Persons Engaged in Mineral Operations. (1) No person shall engage in a mineral operation or related activity without having obtained from the cabinet, a permit and license for the mineral being mined, as required and described under 405 KAR 5:030 and 405 KAR 5:025.

(2) No person shall remove and commercially use or sell coal from a mineral operation except where an exemption has been obtained under 405 KAR 7:035.

(3) A person engaged in a mineral operation, shall not throw, pile, dump, or permit, the throwing, piling, dumping, or otherwise placing of any: overburden, stones, rocks, shale, earth, soil; dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit; or push materials over outslopes in such a way that normal erosion or slides brought about by natural, physical, changes will permit the materials to go beyond or outside of the area of land, which is under permit.

(4) A person engaged in a mineral operation shall not engage in any activities, which will result in a condition or constitute a practice

that, creates an imminent danger to the health or safety of the public.

(5) A person engaged in a mineral operation shall not engage in any activities which will result in a condition or constitute a practice that, causes or can reasonably be expected to cause, significant, imminent, environmental harm, to land, air, or water resources.

(6) Upon development of any emergency conditions which threaten the life, health, or property of the public, a person engaged in a mineral operation shall immediately notify the person or persons whose life, health, or property are so threatened; shall take all reasonable actions to eliminate the condition creating the emergency, and shall immediately provide notice of the emergency conditions to the division, to local law enforcement officials, and to local government officials. Any emergency action taken by a person engaged in a mineral operation, pursuant to this paragraph, shall not relieve that person of other obligations under this chapter or of obligations under other applicable local, state, or federal laws and regulations.

(7) Requirements for exploration.

(a) Any person who intends to conduct noncoal mineral exploration shall at least twenty one (21) days prior to conducting the exploration, file with the cabinet a written notice of intention to explore.

(b) The notice shall include:

1. The name, address and telephone number of the person seeking to explore;

2. The name, address and telephone number of the representatives who will be present at, and responsible for, conducting the exploration activities;

3. A precise description of the exploration area (including latitude, longitude, nearest community, and a copy of a 7.5 minute series topographic map showing the quadrangle and proposed location for the exploration activities;

4. A statement of the period of intended exploration;

5. The names and addresses of the owner on record of the surface land and the subsurface mineral estate of the area to be explored; and

6. A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area, before equipment is removed from the proposed exploration area;

7. The cabinet shall place the notice on public file and make available for public inspection and copying at the appropriate regional office of the department.

(8) Compliance with the requirements of this chapter does not relieve any person engaged in a mineral operation from compliance with other applicable administrative regulations of the cabinet and other agencies.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth general provisions with regard to applicability, conflicting provisions, severability, and obligations of mineral permittees.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. Any costs resulting from this administrative regulation for those newly regulated mineral operations will be minimal.

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: There is a new requirement for filing a notice of intention to explore describing the location of the exploration and other basic information.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated and the need to inspect exploration sites.

2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.
(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: There are no other comments.
TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:021. Permit and license fees.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation provides for the payment of permit and license fees.

Section 1. Permit Fees. (1) Each application for an original permit, amendment, renewal, and transfer shall be accompanied by a permit fee.
(2) The permit fee shall be fifty (50) dollars for each year of the permit term. For amendments and transfers the fee shall be assessed for the years remaining in the permit term. The permit term may be for one (1) to five (5) years.

Section 2. License Fees. (1) Each application for a license shall be accompanied by a license fee.
(2) The license fee shall be $200 per year.

Section 3. Method of Payment. Fees are to paid to the Kentucky State Treasurer; payable by cash, company check, cashier's check, or money order.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 14, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.
WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:
CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk
(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter

13A by codifying the regulatory program. This administrative regulation provides for the payment of permit and license fees.

(a) Direct and indirect costs or savings to those affected:

1. First year: The permit fee has been increased from $25 to $50. The license fee has been increased from $100 to $200.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will effect state revenues because the permit and license fees are proposed to be increased.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:025. License requirements.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations, to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth licensing provisions for mineral operators with regard to general criteria, license duration, and handling of outstanding violations.

Section 1. General. Any person, partnership, or corporation desiring to conduct a mineral operation through a strip mining process, or through activities involving surface disturbance of underground mining, and surface disturbance of dredging operations, shall first obtain a license from the cabinet.

Section 2. License Duration. The license shall be issued to the mineral operator for a period of one (1) year; renewable each year thereafter. The license will not be renewed if there is a violation pending on a company until the violation has been abated. The company shall maintain a license as long as the mineral operation is permitted.

Section 3. Suspension of License. (1) After a reasonable notice is given and a hearing is held, pursuant to 405 KAR 5:085 and 405 KAR 5:095, a license may be suspended by the cabinet upon failure of a mineral operator to perform as required under a notice of noncompliance and remedial measures or an order for cessation and immediate compliance.

(2) A mineral operator whose license has been suspended shall not be eligible to receive another license or to have a suspended license reinstated unless one of the following conditions are met:

(a) The mineral operator has complied with the notice or order and all other statutory and regulatory requirements have been satisfied;

(b) The land for which the license was suspended has been reclaimed without cost to the state; or

(c) The mineral operator has paid into the Kentucky State Treasury a sum that the cabinet finds is adequate to reclaim the lands.

Section 4. License Application Form. (1) The form, Application for Noncoal Surface Mining License, NCR-1, July/1994, is hereby incorporated by reference.

(2) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth licensing provisions for mineral operators with regard to general criteria, license duration, and handling of outstanding violations.

(a) Direct and indirect costs or savings to those affected:

1. First year: The licensee fee is addressed in another regulation, 405 KAR 5:021. The other provisions of this regulation will not cause a cost to be incurred unless the mineral operator fails to comply with the regulatory program. In such case, costs will be incurred to correct violations and reclaim the mine site.

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: Mineral operators must apply for a license.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:030. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations; to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation specifies certain information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies. Also contained herein, are provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation pertains to any person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements. A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas; including but not limited to, location of access roads, spoil or waste areas, and sedimentation ponds. Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with appropriate persons.

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the location and address prescribed by the cabinet.

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including his phone number;

(b) The registered agent for service of process, if applicable, including his phone number;

(c) Any owners, partners, or if a corporation, any officers or

stockholders owning ten (10) percent or more stock;

(d) The project engineer, along with his registration number and name of associated firm;

(e) The company and engineer in which correspondence concerning the subject permit shall be addressed to;

(f) Surface owners of record within the area proposed for mining;

(g) Mineral owners of record within the area proposed for mining; and

(h) Surface owners of record within 500 feet of the proposed permit boundary.

(2) If the company has undergone a name change or changes during the previous five (5) years, list the names.

(3) Specify the applicant's legal structure.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, specify the county and state where the name is registered.

(5) List previous Kentucky permits held by the applicant or any individual, partnership or corporation associated with the applicant.

(6) Provide the name of the contact person at the site, including his phone number.

(7) Specify whether the applicant currently holds a valid license from the division, and provide the effective date and expiration date of that license, if applicable.

(8) Specify the type of application, along with the permit number.

Section 3. Bond Information. When bond is required, as specified under 405 KAR 5:080, the following information shall be provided in the permit application:

(1) The bond amount per acre;

(2) The total amount of bond; and

(3) The bond type:

(a) If a surety is used, provide the bond number and surety.

(b) If a certificate of deposit is used, provide the bank name and CD number.

(c) If a letter of credit is used, provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If the proposed mineral operation will occur within 300 feet of an occupied dwelling, the permit application shall contain a waiver from the affected landowner, acknowledging approval of the activity.

(2) If the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain a statement from the appropriate agency or local government with jurisdiction over the road that the public and the landowner affected will be protected.

(3) If a permanent pond is proposed, approval from the landowner approving the structure, is required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the Commonwealth, the applicant shall obtain the appropriate permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for any disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or any other point source discharge is proposed, a KPDES permit shall be obtained from the Kentucky Division of Water.

(6) If water withdrawal is proposed, a Water Withdrawal Permit shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, show the zoning approval.

(8) If there are existing utilities such as gas lines, electric lines and poles, water lines, etc., the applicant shall submit letters of agreement signed by the applicant and the utility company that confirm that the applicant has consulted with the utility company and the company is in agreement that the proposed mining plan adequately protects the utilities.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine, along with the appropriate date.

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representatives, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the appropriate United States Geological Survey Topographical Map which shall:

(1) Delineate the proposed permit area, including any areas overlying underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet, of the proposed permit boundaries, including, those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area and all landowners within 500 feet of the proposed permit boundary, along with the names of all the landowners;

(5) Delineate all envisioned access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 5:026 and 5:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as, parks, wildlife management areas, and nature preserves, and utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary.

(8) Locate any sites listed on the National Register of Historic Places and any known archaeological sites.

(9) Delineate any wetlands which may be affected by the proposed mineral operation.

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation.

(11) Show any proposed pit area, sediment structures, storage areas, and any other facilities and features related to the mineral operation.

(12) Provide a north point arrow.

(13) Contain a legend which shall:

(a) Provide the company name;

(b) Provide the application number;

(c) Provide the county and quadrangle names;

(d) Provide the site coordinates;

(e) Provide the site address;

(f) Provide the map scale and contour interval;

(g) Provide a description of the site location including:

1. The nearest stream; and

2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operation

features and facilities including, pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected; and

(j) Specify the deposit to be mined.

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer's registration number; and

(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:

(a) Latitude and longitude;

(b) The nearest community;

(c) The name of the nearest stream;

(d) The nearest public road intersection;

(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur.

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance.

(3) Specification of the mineral to be extracted.

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation.

(5) Specification of whether any active discharges exist which may affect the proposed mineral operation. If so, provide the following information:

(a) The pH of the discharge; and

(b) The source of the discharge.

(6) Specification of whether underground workings will be encountered, and the distance, in feet, to the nearest active deep mine.

(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural resource information. The applicant shall specify whether any sites listed on the National Register of Historic Places or any known archaeological sites exist within, or adjacent to, the proposed permit boundary. If these sites exist, the following information shall be provided:

(1) Identification and description of the site or sites;

(2) A description of the measures to be taken to mitigate adverse impacts to the site or sites; and

(3) Show the location of the sites on the map.

Section 11. Environmental resources information. (1) The applicant shall specify whether the proposed mineral operation will occur within, or in any way affect, a wetland. If so, delineate wetland areas on the map.

(2) The applicant shall indicate whether there are any wildlife management areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, delineate them on the map.

(3) The applicant shall indicate whether disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(4) The applicant shall indicate whether there are any outstanding resource waters, pursuant to 401 KAR 5:026 and 5:031, within the vicinity of the proposed mineral operation. If so, delineate these waters on the map.

Section 12. Hydrologic Balance Protection Plan. The permit application shall contain a hydrologic balance protection plan which shall demonstrate to the satisfaction of the cabinet compliance with 405 KAR 5:050 and 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings and specifications for each structure to include:

(a) The structure number;

(b) The number of acres to be disturbed within the drainage area;

(c) The number of acres in the drainage area;

(d) Sediment storage capacity;

(e) Storage capacity at the principal spillway;

(f) Storage capacity at the emergency spillway;

(g) Spillway capacities;

(h) Structure height measured from the downstream toe; and

(i) All other engineering designs, dimensions and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055 or otherwise required by the cabinet.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment will be removed and disposed.

(3) The applicant shall state whether any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate any other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. (1) If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment which demonstrates compliance with 405 KAR 5:055.

(2) If a permanent impoundment is proposed, a narrative shall be provided, in addition to the specifications of subsection (1), addressing information pertinent to the permanent impoundment.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:060.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:

(a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary.

(b) Specifies the intended postmining land use for the proposed

permit area.

(c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.

(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:001.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan which shall demonstrate, to the satisfaction of the cabinet, compliance with the requirements of 405 KAR 5:070, and is consistent with, 405 KAR 5:065, and that provides the following information:

(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium.

(2) Results of analysis, or a commitment that analysis will be conducted, for the topsoil for the following parameters:

(a) Buffer pH;

(b) Nitrogen;

(c) Potassium;

(d) Phosphorous;

(e) Percent of organic material; and

(f) Texture class.

(3) Results of analysis, or a commitment that analysis will be conducted, for minimum application rates for fertilization requirements.

(4) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre).

(5) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre).

(6) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by appropriate descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate, to the satisfaction of the cabinet, compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky registered professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) A prospective applicant for a new permit required under KRS Chapter 350, shall publish at least once, a public notice of his intention to file an application for that permit. The publication shall be made by advertisement in the newspaper of largest bona fide circulation, in the county wherein the proposed mining site is located.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled, "Notice of Intention to Mine Noncoal Minerals", and shall be in a manner and form prescribed by the department and shall include, though not be limited to, the following:

(a) Name and address of the applicant;

(b) Permit application number;

(c) The location of the proposed mining site;

(d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mineral operations.

(4) The applicant for a new permit required by KRS Chapter 350, shall establish the date and place at which the, "Notice of Intention to Mine Noncoal Minerals", was published, by attaching to his application, an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained when the mineral permittee desires to modify his mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

(1) The application for revision shall be filed with the cabinet within sixty (60) days prior to the date on which the mineral permittee expects to revise the mineral operation;

(2) The term of a permit shall remain unchanged by a revision; and

(3) The application for revision shall be submitted in the form prescribed by the cabinet.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral operations under the permit. Applications for amendment may be filed at any time during the term of the permit.

(1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit under this administrative regulation.

(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:080, for each additional acre or fraction thereof.

Section 24. Permit Renewals. Any valid permit issued pursuant to this chapter shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit.

(1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized under the existing permit, the portion of the application which addresses any new land areas shall be subject to all applicable requirements of this chapter, and a new original permit application shall be required for these areas.

(3) The permit renewal shall be issued if the following requirements are met:

(a) The application for renewal shall be submitted in the form prescribed by the cabinet;

(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including but not limited to:

1. An updated operational plan current to the date of request for renewal; and

2. Specification of the status and extent of all mineral operations on the existing permit area;

(c) The mineral permittee is in compliance with all applicable statutes and administrative regulations;

(d) The present mineral operation is in compliance with all applicable statutes and administrative regulations; and

(e) The mineral permittee shall provide any additional bond that the cabinet may require.

Section 25. Permit transfers. (1) No permit issued pursuant to this chapter shall be transferred by sale, assignment, lease, or otherwise except upon the prior written approval of the cabinet.

(2) There shall be no succession on the permitted area without the prior written approval of the cabinet.

(3) The initial mineral permittee shall notify the cabinet, in writing, of any proposed succession, sale, assignment, lease, or other

transfer.

(4) The cabinet may release the first mineral operator from reclamation responsibility under this chapter as to that particular mineral operation, however:

(a) There shall be no release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of this chapter; and

(b) The successor shall immediately assume, as a part of his obligation under this chapter, all liability for the reclamation of the area affected by the former permitted mineral operation.

(5) If the cabinet has given its prior written approval to the transfer, a successor in interest to a mineral permittee who applies for a new permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(6) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

(a) To technically withdraw the permit application;

(b) To deny the permit application; or

(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date when the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall set forth the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet he may, by written notice, request a hearing by the cabinet, pursuant to 405 KAR 5:095.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. No application for a permit and no mineral operation shall be approved, unless the application affirmatively demonstrates and the cabinet determines on the basis of information set forth in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that all requirements of 405 KAR Chapter 5 have been complied with.

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5.

(3) The proposed mineral operation will not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation which constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation.

(4) The proposed mineral operation will not adversely affect fragile lands, natural hazard lands, a wild river established pursuant to KRS Chapter 146 or jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior, pursuant to the Endangered Species Act of 1973, as amended (16 USC Sec. 1531 et seq.) or result in the destruction or adverse modifications of the habitat of these species.

(5) The proposed mineral operation will not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area.

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 USC 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made, by the cabinet, that the interest of the public and the landowners affected thereby will be protected.

(e) Not within 300 feet, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an allowance, as required by Section 5 of this administrative regulation. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required under Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that the authorization is environmentally sound and that all other applicable laws and administrative regulations have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation will be conducted in compliance with all applicable statutes and administrative regulations.

(2) All mineral operations shall be conducted in accordance with all applicable statutes and administrative regulations and any conditions imposed by the cabinet on the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be

eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters 1 and 3, and 405 Chapters 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for any mineral operation or any surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless;

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum as the cabinet finds is adequate to reclaim the lands.

(4) If the applicant, mineral operator, any subcontractor, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied; however nothing contained herein shall be construed as to relieve a mineral permittee of responsibility with respect to any permit issued to him.

(5) If the cabinet determines that any activity regulated pursuant to 405 KAR Chapter 5, which is owned or controlled by the applicant, is currently in violation of any environmental law or administrative regulation of the Commonwealth, then the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof which is satisfactory to the cabinet that the violation has been corrected, or is in the process of being corrected in good faith; or

(b) Establish, to the satisfaction of the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(6) If the applicant submits the proof specified under subsection (5) of this section, then the cabinet may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination under this section, then he has the right to request an administrative hearing pursuant to 405 KAR 5:095.

Section 30. Permit Conference. Procedures for requests. Any person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state or local government agency or authority, may request an informal conference. The agency or individual shall request that the Cabinet hold an informal conference on any application for a permit.

(1) Briefly summarize the issues to be raised by the requester at the conference.

(2) The conference shall be held at the Division of Field Services.

(3) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(4) The conference shall be conducted by a representative of the cabinet who may accept oral or written statements and any other relevant information from any party to the conference.

(5) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference need not be held.

(6) All comments and evidence will be taken into consideration by the Division of Field Services in Frankfort before a final decision is made on the disposition of the application.

(7) The record shall be maintained and shall be accessible to the parties during the life of the mineral operation.

Section 31. Existing Mineral Operations not Previously Regulated. (1) Existing mineral operations that were not permitted or regulated prior to the effective date of this administrative regulation shall obtain a permit within 180 days of the effective date of this administrative regulation.

(2) The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation where an existing disturbance within those limits was made prior to the effective date of this administrative regulation by an existing mineral operation that was not permitted or regulated prior to the effective date of this administrative regulation. These variances shall only be granted when no practical and reasonable remedial compliance measure can be identified.

Section 32. Documents Incorporated by Reference. (1) The following form is hereby incorporated by reference: Application for Surface Disturbance Mining Permit Noncoal Mining, NCR-2, March, 1990.

(2) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip

mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation specifies certain information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies. Also contained herein, are provisions concerning review of permits and other permit related procedural matters.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected except for a new requirement to advertise the intention to mine once in a newspaper. For those mineral operations that are newly regulated there will be a significant cost incurred to prepare the application for a permit.

2. Continuing costs or savings: Same as first year for most mineral operations. Those mineral operations that must be permitted for the first time during the first year will not have that initial permitting cost as an ongoing expense.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants must apply for a new permit, revisions, amendments, renewals, and transfers.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: After the first year when the newly regulated mineral operations must be permitted, the increase in cost to the cabinet will be substantially less.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be approximately 30 additional permit applications to review during the first year.

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? Yes. Tiering was applied to the existing mineral operations that were not previously regulated or permitted prior to the effective date of this administrative regulation. An 180 day period to obtain a permit was established. There is a provision for a limited variance for certain distance limits.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:035. Signs and markers.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning signs and markers for noncoal mineral operations.

Section 1. General. (1) All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of wood or metal.

(2) Signs and other markers shall be maintained by the mineral permittee during all mineral operations, to which they pertain, and shall be kept legible and visible and shall conform to all local ordinances and codes.

(3) Signs constructed pursuant to this administrative regulation shall be constructed of wood or metal, with the sign face to be at least two (2) feet in height and four (4) feet in width, and the top of the sign to stand not less than six (6) feet above the ground.

Section 2. Mine and Permit Identification Signs. (1) Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways.

(2) Signs shall clearly identify the name, business address, and telephone number of the mineral permittee and identification numbers of current mineral operation permits or other authorizations to operate.

(3) The signs shall not be removed until after release of permit.

(4) Failure to post the signs shall be grounds for revocation of the permit.

(5) The permit boundaries shall be clearly marked by durable and easily recognized markers.

Section 3. Stream Buffer Zone Markers. Except where specifically approved, lands within 100 feet of perennial and intermittent streams shall not be disturbed. These areas are to be designated as buffer zones, and shall be marked along the interior boundary of the buffer zone in a manner consistent with perimeter markers.

Section 4. Blasting Signs. Blasting signs shall be posted in accordance with the requirements of the Department of Mines and Minerals.

Section 5. Topsoil markers. (1) If applicable, stockpiles, and other areas where topsoil or other plant growth material are segregated, shall be marked.

(2) If soil horizons are removed and stored separately, each soil horizon stockpile shall have a separate and appropriately marked sign.

(3) Placement and quantity of markers shall be sufficient to clearly define the stockpiles.

(4) Markers shall remain in place until the material is removed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions concerning signs and markers for noncoal mineral operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there will be a small cost to comply with this administrative regulation.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:038. Blasting.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation relates to the use of explosives for noncoal mineral operations.

Section 1. General. (1) If blasting is planned for the proposed mineral operation, it shall be conducted in accordance with the laws and administrative regulations of the Kentucky Department of Mines and Minerals, 805 KAR Chapter 4. If at any time the laws and administrative regulations are not being complied with, Mines and Minerals Division of Explosives and Blasting, shall be notified.

(2) If flyrock falls outside the permit boundary, or if property damage occurs outside of the permit boundary, as a result of flyrock, then appropriate mitigative measures, as determined by the cabinet, shall be taken.

Section 2. Blasting signs. Warning signs shall be posted if explosives are to be used, in accordance with 405 KAR 5:035.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 14, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.
WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:
CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk
(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation relates to the use of explosives for noncoal mineral operations. For the most part, it refers to the administrative regulations of the Department of Mines and Minerals, except for flyrock.
(a) Direct and indirect costs or savings to those affected:
1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there will be a small cost to comply with this administrative regulation if flyrock falls outside the permit boundary. All mineral operations must already comply with the explosives regulations of the department of Mines and Minerals.
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: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to

include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: The Department of Mines and Minerals has administrative regulations pertaining to use of explosives. This administrative regulation refers to those administrative regulations and only adds a brief provision relating to flyrock.

(a) Necessity of proposed regulation if in conflict: Not applicable; this administrative regulation is not in conflict with the administrative regulations of that Department of Mines and Minerals.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable; the cabinet chose to refer to the administrative regulations of the Department of Mines and Minerals to avoid duplication and conflict.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:040. Access roads and haul roads.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions and specifications for constructing haul roads and access roads for noncoal mineral operations.

Section 1. General. (1) Each mineral permittee shall design, construct, utilize, and maintain roads and restore the area to meet the requirements of this administrative regulation and to control or minimize erosion and siltation, air and water pollution, and to prevent damage to public or private property.

(2) To the extent possible using the best technology currently available, roads shall not cause damage to fish, wildlife, and related environmental values and shall not cause additional contributions of suspended solids to streamflow or to run-off outside the permit area. Any additional contributions shall not be in excess of limitations of state or federal law.

(3) The design of roads shall be certified by a qualified registered professional engineer as being in accordance with specifications, except to the extent that alternative specifications are used. Alternative specifications may be used only after approval by the cabinet upon a demonstration by a qualified registered professional engineer that they will result in performance, with regard to safety, stability and environmental protection, equal to or better than, that resulting from roads complying with the specifications of this administrative regulation.

(4) Use of a preexisting private road, or any portion thereof by the mineral operator requires:

(a) That the road be kept open and in a condition that local traffic can use it without damage to their means of transportation.

(b) That if any disturbance by the mineral operator makes the road impassable, a detour of comparable usability shall be provided.

(5) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the cabinet for stream crossings.

(6) Stream fords are prohibited unless they are specifically approved by the cabinet as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of Section 4 of this administrative regulation.

(7) Access roads, haul roads, and any yard areas or parking areas shall be maintained with proper surface materials to prevent erosion.

(8) The deposition of mud and other debris on public roads shall be minimized to the extent possible in order to prevent public nuisance.

Section 2. Specifications for Access and Haul Roads. (1) The grade of an access road shall be such that:

(a) There shall be no more than 400 feet of grade exceeding ten (10) percent.

(b) The maximum grade shall not exceed fifteen (15) percent for 300 feet.

(c) There shall not be more than 300 feet of maximum grade for each consecutive 1,000 feet of road constructed.

(d) All grades referred to in this subsection shall be subject to a tolerance of two (2) percent grade.

(2) Appropriate drainage control shall be provided for access and haul roads conforming to the following stipulations:

(a) A ditch shall be provided on both sides of a throughcut, and on the inside shoulder of a cut-fill section, with ditch relief cross drains being spaced according to grade.

(b) Water shall be intercepted before reaching a switch back or large fill and be led off.

(c) Water on a fill or switch back shall be released below the fill, not over it.

(d) Ditch relief structures shall be installed, where possible, according to Appendix A of this administrative regulation which represents spacing in terms of percent of ditch line grade on the basis of 100 square inch openings per culvert.

(3) Cut slopes shall not be steeper than specifically authorized by the cabinet, and shall not be steeper than 1v:1.5H in unconsolidated materials or 1v:0.25h in rock, except that steeper slopes may be specifically authorized by the cabinet if geotechnical analysis demonstrates that a minimum safety factor of one and five-tenths (1.5) can be maintained.

(4) Embankment slopes shall not be steeper than 1v:2H, except where the embankment material is a minimum of eighty-five (85) percent rock. Slopes with eighty-five (85) percent rock shall not be steeper than 1v:1.35H.

(5) If a berm is produced in skimming the road, it shall not be left on the ditch side.

(6) Access roads shall not be surfaced with any acid-forming or toxic-forming material, the surface being that part of the road exposed to the elements of wind, rain, and sun.

(7) No bridges, culverts, stream crossings, or similar structures, shall be removed until the reclamation is completed.

(8) When an access road is to be abandoned, and will no longer be used as a road by the mineral operator, the landowners, or the state or national forest services, surface drainage and vegetative cover shall be provided to minimize erosion.

(a) Regardless of the future use of the road, adequate surface drainage shall be provided.

(b) A road will be considered to be abandoned when the mineral operator has ceased to use the road and has not turned the road over

to another party for his use.

(c) When adequate surface drainage and vegetative cover has been provided, the mineral operator shall be relieved of all further obligations in maintaining the road.

(9) If the cabinet determines that modifications are necessary because of topography or particular watershed situations, the cabinet may make the modifications.

(10) All measurements referred to in this section, including grade limitations, shall be subject to a tolerance of plus or minus five (5) percent of measurement.

(11) Typical section showing width of road cut, fill slopes, surface material of road, a center line profile with grades, pipe location and size, shall be included in the permit application.

Appendix A of 405 KAR 5:040

DITCH LINE GRADIENT (PERCENT)	SPACING OF CULVERTS (FEET) (Shall not exceed)
2	600
3	500
4	400
5	320
6	275

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

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CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth general provisions and specifications for construction haul roads and access roads for noncoal mineral operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there may be a cost to comply with this administrative regulation if any access or haul roads need to be upgraded.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:045. Protection of cultural and environmental resources.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for the protection of historical sites, archaeological sites, fish and wildlife values and related environmental entities.

Section 1. Cultural Resources. (1) No mineral operation shall adversely effect a site listed on the National Register of Historic Places.

(2) Adequate steps shall be taken for the protection of significant archaeological sites, as determined by the cabinet.

(3) The cabinet may prohibit any mineral operation that would adversely affect any other historic land, as determined by the cabinet.

Section 2. Environmental Resources. (1) Any mineral permittee shall, to the extent possible, minimize disturbances and adverse impacts to fish and wildlife, and related environmental values.

(2) No mineral operation shall be conducted which is likely to jeopardize the continued existence of an endangered or threatened species listed by the Secretary of the Interior, or which is likely to result in the destruction or adverse modification of a designated critical habitat of these species, in violation of the Endangered Species Act of 1973 as amended (16 USC Sec. 1531 et seq.), or is likely to negatively impact a species protected by similar state statutes.

(3) No mineral operation shall be conducted which will result in the adverse effects to or modification of a wetland without the appropriate permits and approvals.

(4) No mineral operation shall be conducted within the boundaries of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; National Recreational Areas; state nature preserves dedicated pursuant to KRS 146.410; or state wildlife management areas; the Wild and Scenic Rivers System, including study rivers designated under section 5(a), of the Wild and Scenic Rivers Act (16 USC Sec. 1276 (a)), or rivers or study river corridors as established in any guidelines pursuant to that Act; rivers and their corridors designated under the state Wild Rivers Act pursuant to KRS Chapter 146; or similar public lands.

(5) No land within 100 feet of an intermittent or perennial stream shall be disturbed by mineral operations, except where appropriate permits or approvals have been obtained.

(6) The cabinet may prohibit any mineral operation that would adversely affect any fragile land, as determined by the cabinet.

(7) The cabinet shall prohibit any mineral operation on a natural hazard land if necessary to protect the health, safety, or welfare of people, property, or the environment.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory

program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions for the protection of historical sites, archaeological sites, fish and wildlife values and related environmental entities.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those existing mineral operations that are newly regulated, there may be a cost to comply with this administrative regulation, but only a small percentage of those, if any, will be impacted by this administrative regulation. The impact of this regulation is primarily on new operations and may impact where such new operations may be located.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:050. Protection of the hydrologic balance.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions and specifications for the protection of surface waters from noncoal mineral operations.

Section 1. General. (1) Appropriate protection measures shall be designed, constructed, and maintained to minimize disturbance of the hydrologic balance within the permit area, to prevent material damage to the hydrologic balance outside the permit area, and to prevent additional contributions of sediment to streamflow or to run-off outside the permit area.

(2) Protection measures include practices carried out within and adjacent to the disturbed area.

(3) The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the disturbance.

(4) Hydrologic balance protection measures consist of the utilization of proper mining, reclamation methods, and incorporated practices, singly or in combination, including but not limited to:

(a) Disturbing the smallest practicable area at any one time during the mineral operation through progressive backfilling and grading, and timely revegetation;

(b) Shaping the backfill material to encourage a reduction in the velocity of run-off, to an extent which is consistent with the requirements of this chapter;

(c) Retention of sediment within the pit and disturbed area;

(d) Utilization of straw dikes, riprap, check dams, mulches, vegetative buffer zones, dugout ponds, silt fence, and other measures that reduce overland flow velocity, reduce run-off volume, and entrap sediment;

(e) Utilization of other appropriate treatment facilities such as chemical treatment for acid and metals; and

(f) Sedimentation ponds.

(5) Maximum utilization shall be made of on site sediment control practices.

(6) All surface drainage from the disturbed area, including disturbed areas which have been graded, seeded, or planted, shall pass through sediment control structures and, where necessary, other treatment facilities that have been approved by the cabinet, before leaving the permit area.

(a) Sediment control structures shall be retained until untreated drainage from the disturbed area has met the water quality requirements of the administrative regulations of the Division of Water and the revegetation requirements of 405 KAR 5:070 have been met.

(b) All sedimentation ponds required shall be constructed in accordance with this chapter and placed in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water.

(c) Sedimentation ponds may be used individually or in series, and shall be located as near as possible to the disturbed area, and where possible, out of major stream courses.

(7) No mineral operation shall violate any state or federal water quality standard or the effluent limitations established in the administrative regulations of the Division of Water.

(8) The cabinet may require other actions, above and beyond the requirements of this administrative regulation, as necessary to ensure that surface waters are protected.

Section 2. Pond Design Specifications. At a minimum, all sedimentation ponds shall be designed to meet the requirements for impoundments in 405 KAR 5:055 and the following additional specifications:

(1) Sedimentation ponds shall be designed, constructed, and maintained to prevent short circuiting.

(2) Sedimentation ponds shall provide a detention time so that discharges from the pond shall meet the effluent limitations of the administrative regulations of the Division of Water.

(3) There shall be no overflow through the emergency spillway resulting from a ten (10) year, twenty-four (24) hour precipitation event or lesser event, except where a single open channel spillway is approved under 405 KAR 5:055.

(4) The elevation of the crest of the emergency spillway shall be a minimum of one and one-half (1.5) feet above the crest of the principal spillway.

Section 3. Sediment Removal. (1) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations of the administrative regulations of the Division of Water or as directed by the cabinet.

(2) Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and groundwater quality.

(3) Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas.

Section 4. Other Permits and Approvals. (1) Storm water permits, withdrawal permits, and KPDES permits are issued by the Division of Water. General KPDES permits are available from the Division of Water on mineral operations that have a mineral operation permit from the department if they meet certain criteria.

(2) If a mineral operation is located in a flood plain it requires the approval of the Division of Water and the Corps of Engineers.

(3) If a mineral operation requires stream crossings such as low water fords, bridges, etc., the structures are required to be approved by the Division of Water.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth general provisions and specifications for the protection of surface waters from noncoal mineral operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there will be some cost to comply with this administrative regulation if they have not taken measures previously to install protective measures.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: The Division of Water has administrative regulations pertaining to effluent limitations, stream water quality standards, KPDES permits, withdrawal permits, etc. This administrative regulation refers to those administrative regulations to avoid conflict, overlapping, and duplication.

(a) Necessity of proposed regulation if in conflict: Not applicable; there is no conflict in this administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable; this administrative regulation refers to the administrative regulations of the Division of Water to avoid conflict, overlapping, and duplication.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:055. Permanent and temporary impoundments.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for impoundments.

Section 1. Requirements for Permanent and Temporary Impoundments. (1) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(2) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100, shall comply with 401 KAR 4:030. Criteria for the hazard classifications are established by 401 KAR 4:030.

(3) Stability.

(a)1. Permanent and temporary "dams" (as defined in KRS 151.100), permanent and temporary Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least one and two-tenths (1.2).

2. Impoundments not included in subparagraph 1 of this paragraph shall have a minimum static safety factor of one and three-tenths (1.3) for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design will ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

i) Measures shall be taken to control seepage in order to ensure stability of the embankment.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the impoundment with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments which have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary "dams" (as defined in KRS 151.100), for permanent and temporary Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. Where an approved temporary impoundment has been constructed and the mineral permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low

hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Spillways. Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in this subsection, unless the cabinet requires a larger event. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Class A impoundments that are not "dams" (as defined in KRS 151.100) shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary impoundment; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent impoundment.

(b) Temporary class A impoundments that are "dams" (as defined in KRS 151.100) shall pass the 100 year, six (6) hour precipitation event.

(c) Permanent and temporary class B and C impoundments and all permanent "dams" (as defined in KRS 151.100) shall comply with the criteria established in 401 KAR 4:030.

(d) Emergency spillway grades and allowable velocities shall be approved by the cabinet.

(7) Single spillway. Class A impoundments that are not "dams" (as defined in KRS 151.100) may use a single spillway if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) Emergency procedures. If any examination or inspection of an impoundment discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The mineral permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the mineral permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

Section 2. Additional Requirements for Permanent Impoundments. (1) General.

(a) The retention of a permanent impoundment is subject to the approval of the cabinet.

(b) Permanent impoundments are encouraged. However, it shall be demonstrated to the cabinet's satisfaction that adequate sources of water are available to maintain the water level of the impoundment at a reasonable elevation at all times. Adequate sources of water supply for impoundments may be from springs, drainage areas of sufficient size, groundwater percolation, a flowing stream, or any combination of these sources.

(c) In accordance with 405 KAR 5:030, a narrative description of the water impoundment shall be submitted in addition to the plans and specifications. This narrative shall describe, in detail, all pertinent information pertaining to the water impoundment.

(d) In accordance with 405 KAR 5:030, if a permanent impoundment is proposed, an affidavit from the landowner, approving the impoundment, is required.

(2) If a permanent impoundment is proposed, the following stipulations shall be met:

(a) Adequate means of access, such as roads or ramps, are left or provided to the water impoundment.

(b) A terrace shall be provided above, but in near proximity to, the high water level of the permanent impoundment, except on the portion of the impoundment comprising the highwall of the pit.

(c) Any spoil above the terrace shall be graded until it is rounded off and blended into the area contour above the terrace.

(d) All spoil piles adjoining access roads to permanent impoundments shall be graded to minimize erosion and blend into the surrounding area.

(e) The angle of the slope from the roadbed to the top of the spoil may be greater than the surrounding area if adequate drainage measures are taken to prevent erosion of the slope, including but not limited to, terracing and vegetation.

(f) The roadbed shall be adequately drained and culverts shall be provided so as to prevent it from being eroded.

(g) The area above the highwall on any permanent water impoundment shall be protected by a landscape barrier or a fence approved by the Department for Surface Mining Reclamation and Enforcement.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under

permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions for impoundments.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there may be a cost to comply with this administrative regulation if there are any impoundments on site that need to be modified.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: The Division of Water has administrative regulations pertaining to impoundments. This administrative regulation refers to those administrative regulations for Class B and C impoundments and permanent dams in order to avoid conflict, overlapping, and duplication.

(a) Necessity of proposed regulation if in conflict: Not applicable; there is no conflict in this administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable; this administrative regulation refers to the administrative regulations of the Division of Water for Class B and C impoundments and permanent dams in order to avoid conflict, overlapping, and duplication.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:060. Handling of materials.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning backfilling and grading, handling of wastes, handling of acid or toxic-forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.

Section 1. Backfilling and Grading. (1) General statement concerning backfilling. All overburden that is not placed in approved excess spoil fills shall be placed back in existing pits and graded.

(2) Surface drainage.

(a) Natural drainways in the area affected by the mineral operation shall be kept free from overburden.

(b) If, during the mineral operation, it is necessary to cross a natural drainway, proper drainage structures shall be provided.

(c) Sufficient water retarding structures, silt control structures, and diversion ditches, constructed as approved by the cabinet, shall be placed to control all run-off from the mineral operation before the work begins. These structures shall be located as near as possible to the disturbed area, and out of perennial streams unless approved by the cabinet.

(d) Any water accumulating on a bench or similar area where the drainage is off the mineral operation shall be pumped or siphoned into sediment control structures.

(e) The moving of overburden to release accumulated water shall be prohibited unless a drainway can be constructed with the approval of the cabinet.

(3) If the mineral operation produces a highwall, at least one (1) suitable access shall be provided to lands above the highwall within each 4,000 feet of distance along the highwall. In addition, access shall be provided as necessary so no landowner is prevented access to his property.

(4) Spoil or overburden removed shall be placed, graded, and stabilized so that soil erosion, surface disturbance, and stream sedimentation will be minimized.

(5) All grading shall be kept current and shall be completed before equipment pertinent to the mineral operation is moved from the site.

(6) If conditions develop in the mineral operation so that the approved reclamation plan and backfilling and grading plan cannot be carried out as planned, modifications of the plan shall be submitted

by the mineral operator to the cabinet for approval.

Section 2. Waste Materials. (1) The conduct of mining and the handling of refuse and other mining wastes shall be done in such a way as to reduce adverse effects in the area and to protect the public and adjoining landowners from damage to their lands, to streams, and to other property.

(2) Upon final abandonment, all buildings, structures, metal, lumber, and other refuse resulting from the mineral operation shall be removed or buried.

(3) Spoil, overburden, refuse, or any other mining waste shall not be placed on a previous or potential slide area. The placement of the material shall be subject to approval by the cabinet.

(4) Unless specifically authorized by the cabinet by a permit from the Division of Waste Management, household wastes or other wastes, generated off site, shall not be placed within the pit area or within the permit boundary of a mineral operation.

Section 3. Acid-forming or Toxic-forming Materials. (1) All acid or toxic-forming material shall be buried with not less than four (4) feet of clean fill as cover.

(2) Measures shall be taken to prevent stream and soil pollution, such as placement of acid or toxic-forming materials outside of natural drainways.

(3) The mineral permittee shall conduct testing of materials as directed by the cabinet.

Section 4. Topsoil Handling. (1) General requirements.

(a) If practicable, all topsoil or subsoil to be saved for redistribution, specified under subsection (2) of this section, shall be removed as a separate layer or layers from the area to be disturbed and shall be segregated from other materials.

(b) If practicable, after removal, these materials shall be redistributed immediately to backfill areas, or otherwise stockpiled.

(c) After redistribution, if the topsoil becomes encrusted and hard, it shall be scarified prior to seeding.

(2) Soil removal. For areas where topsoil is to be removed and saved as a plant growth medium:

(a) Vegetative cover that would interfere with the salvage or use of the topsoil shall be cleared. Herbaceous vegetation and other small plant forms which will add to the organic constituency of the topsoil, but do not interfere with topsoil salvaging, may be retained along with the topsoil.

(b) All the topsoil present in the area to be disturbed shall be removed and segregated for redistribution.

1. If less than six (6) inches of topsoil is present, then at least the upper six (6) inches of topsoil shall be removed and segregated for redistribution, except where less than six (6) inches of soil is present.

2. Where less than six (6) inches of soil is present, whatever soil and subsoil is available, at the area to be disturbed, shall be removed and segregated for redistribution.

(c) To the extent practicable, all subsoil, above and beyond that which is referenced in this subsection, shall be removed and segregated for redistribution. This subsoil material shall be redistributed as a separate layer immediately below the soil materials referenced in this subsection.

(3) Soil storage.

(a) Soil materials removed pursuant to subsection (2) of this section shall be stockpiled only if it is impractical to promptly redistribute the materials on regraded areas.

(b) Stockpiled soil shall be selectively placed on stable areas, outside of water drainways and shall:

1. Be protected from wind and water erosion through the seeding of quick cover grasses or legumes and application of mulch;

2. Be seeded with perennial grasses and legumes if the soil is to be stockpiled for more than two (2) years; and

3. Be protected from unnecessary compaction.

(4) Soil amendments.

(a) Lime shall be applied to redistributed topsoil in an amount to obtain a buffer pH of six and four-tenths (6.4).

(b) Adequate fertilizer shall be applied to redistributed topsoil based upon soil tests performed by a qualified laboratory using standard methods. At a minimum, 100 pounds of nitrogen (N) and 100 pounds of phosphate (P_2O_5) shall be applied per acre.

(c) Areas where topsoil has been redistributed shall be seeded with quick cover and permanent grasses and legumes as soon as possible during first normal period of favorable planting.

(d) Suitable mulch or other soil stabilizing practices shall be used in addition to temporary cover on all regraded and topsoiled areas to control erosion, promote germination of seeds, and increase the moisture retention capacity of the soil. The cabinet may, on a case-by-case basis, waive the requirement for mulch if the cabinet finds, based on seasonal, soil, and slope factors, that the temporary vegetative cover will achieve proper erosion control until a permanent cover is established, except that no waiver shall be granted for any area having a slope greater than ten (10) percent.

Section 5. Disposal of Excess Spoil. (1) General. Excess spoil shall be placed in designated disposal areas, within a permit area, in a controlled manner to:

(a) Minimize the adverse effects of leachate and surface water run-off from the fill on surface and groundwater;

(b) Ensure mass stability and prevent mass movement during and after construction; and

(c) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(2) Location. Where possible, placement in pits shall be the preferred location for disposal. Otherwise the disposal area shall be located on the most moderately sloping and naturally stable area available among those upon which, in the judgment of the cabinet, spoil could be placed in compliance with all applicable requirements of 405 KAR Chapter 5, and shall be placed, where possible, upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) Placement in pits. On a case-by-case basis, the cabinet may waive all or part of the requirements of subsections (4) through (7) of this section where spoil is placed in pits where there is no potential for mass movement or substantial erosion.

(4) Design certification.

(a) The fill and appurtenant structures shall be designed using current, prudent engineering practices by a qualified, registered professional engineer experienced in the design of earth and rock fills who shall certify the design of the fill and appurtenant structures.

(b) The fill shall be designed and constructed to attain a minimum long-term static safety factor of one and five-tenths (1.5). The foundation and abutments of the fill and all other features shall be sufficient to ensure stability of the fill and appurtenant structures under all stages and conditions of construction.

(5) Stability.

(a) Stability analyses shall be performed by a qualified, registered professional engineer. Parameters used in the stability analyses shall be based upon adequate investigations of foundation and fill material, as approved by the cabinet, including field reconnaissance; subsurface investigations; and data obtained from laboratory analyses of the materials or, if approved by the cabinet, data obtained from other sources that yield results which ensure compliance with the applicable stability requirements of this administrative regulation. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any exist in the area, upon the stability of the fill and appurtenant structures.

(b) If the toe of the fill rests on an area which has a natural land slope in excess of 2.8h:1v (thirty-six (36) percent) or a lesser slope as may be designated by the cabinet based on local conditions,

keyway cuts (excavations to stable bedrock), rock toe buttresses, or a combination of these shall be constructed to ensure stability of the fill.

(6) Placement of excess spoil.

(a) Vegetative and organic materials shall be removed, either progressively or in a single set of operations, from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated, and stored and redistributed in accordance with Section 4 of this administrative regulation. If approved by the cabinet, vegetative material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(b) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts of a thickness approved by the cabinet; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material.

(c)1. The final configuration of the fill shall be suitable for the approved postmining land use.

2. The top of the fill shall be graded no steeper than 20h:1v (five (5) percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface run-off from the top surface of the fill shall not be allowed to flow over the outslope of the fill. The outslope of the fill shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion.

3. Terraces may be constructed on the outslope of the fill. Terrace benches shall be graded with a three (3) to ten (10) percent slope toward the fill. The outslope between terrace benches shall not exceed 2h:1v (fifty (50) percent) or a lesser slope as may be required by the cabinet to ensure stability or minimize erosion. Run-off shall be collected by a ditch along the intersection of each terrace bench and the outslope. This ditch shall route run-off to stabilized diversion channels and shall have a maximum slope that is no greater than 20h:1v (five (5) percent) unless a steeper slope is necessary for permanent roads in conjunction with an approved postmining land use and a steeper slope will not adversely affect the stability of the fill or result in excessive erosion.

(d) Impoundments shall not be allowed on the fill.

(7) Drainage control.

(a) The fill design shall include diversions and underdrains as necessary to control erosion, minimize water infiltration into the fill, and ensure stability except the cabinet may waive underdrain requirements for fills that are not hollowfills if it is demonstrated to the cabinet's satisfaction in the application that underdrains are not necessary because the disposal area does not contain any springs, manmade or natural drainways, or wet-weather seeps and because seepage of water due to precipitation will not adversely affect the stability of the fill. In no case shall surface run-off from above the fill be diverted through or under the fill.

(b) Surface water run-off from the area above the fill shall be diverted away from the fill and into stabilized diversion channels. Surface run-off from the fill surface shall be diverted to stabilized channels off the fill. Diversions associated with excess spoil fills and appurtenant structures shall be designed and maintained to safely pass the peak run-off from a ten (10) year, twenty-four (24) hour precipitation event, except that diversions associated with hollowfills and where flow from an intermittent or perennial stream is diverted the design event shall be the 100 year, twenty-four (24) hour precipitation event.

(c) Underdrains shall be constructed of durable, nonacid-forming, and nontoxic-forming rock; shall be free of coal, clay, and nondurable material; and shall be designed and constructed using current, prudent engineering practices. The underdrain system shall be protected from piping and contamination by a filter system designed and constructed to ensure proper long-term functioning of the underdrain using current, prudent engineering practices. For hollow-fills a subdrainage system for the fill shall be constructed in accordance with the following:

1. Be installed along the natural drainways;

2. Extend from the toe to the head of the fill; and

3. Contain lateral drains to each area of potential drainage or seepage.

(8) Surface area stabilization. During and after construction of the fill and appurtenant structures, slope protection shall be provided to minimize surface erosion at the site of excess spoil disposal and at the locations of appurtenant structures. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

Section 6. Additional performance standards for mineral operations on slopes of more than twenty (20) degrees.

(1) The mineral permittee shall prevent the following materials from being placed or allowed to remain on the downslope:

(a) Spoil;

(b) Waste materials, including waste mineral matter;

(c) Debris, including that from clearing and grubbing of haul road construction; and

(d) Abandoned or disabled equipment.

(2) Nothing in this section shall prohibit the placement of material in road embankments located on the downslope, so long as the material used and embankment design comply with the requirements for roads and other transportation facilities in 405 KAR Chapter 5 and the material is moved and placed in a controlled manner.

(3) Woody materials shall not be buried in the backfilled area unless the cabinet determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the cabinet.

(7) Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the cabinet as stable and not subject to erosion.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

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WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for

Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions concerning backfilling and grading, handling of wastes, handling of acid or toxic-forming materials, topsoil handling of wastes, handling of acid or toxic-forming materials, topsoil handling and conditioning, disposal of excess spoil, and additional performance standards for mineral operations on steep slopes.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there will be a cost to comply with this administrative regulation. The magnitude of the cost will vary greatly depending on site specific circumstances.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:065. Premining and postmining land use.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning land use decisions for noncoal mineral operations.

Section 1. General. All areas within the permit boundary to be reclaimed shall be restored as soon as practicable:

(1) To conditions capable of supporting the uses which those areas supported prior to the mineral operation; or

(2) To conditions capable of supporting a reasonable, alternative land use, as approved by the cabinet under section (2) of this administrative regulation.

Section 2. Land Use Selection. (1) The following is a list of land use categories to be applied under this administrative regulation. These land uses are defined under 405 KAR 5:001, as is the definition of land use:

(a) Cropland;
(b) Fish and wildlife;
(c) Forest land;
(d) Industrial/commercial;
(e) Pastureland;
(f) Recreation; and
(g) Residential.
(h) Permanent water impoundment.

(2) The premining land use selection, required under 405 KAR 5:030, shall be derived from the list of land uses established under subsection (1) of this section.

(3) The postmining land use selection, required under 405 KAR 5:030, shall be derived from the list of land uses established under subsection (1) of this section. The premining land use shall be strongly considered and be given the highest priority for the postmining land use selection.

(4) A land use for fish and wildlife shall be characterized by an intermixed combination of habitat types or vegetative types, such as a mix of forest land or woodlots, shrub/scrub areas, grass/legume areas, and wetland or open water areas, arranged in a manner as to maximize edge effect. In addition, the following specifications shall apply to a postmining land use selection for fish and wildlife:

(a) At least thirty (30) percent of the revegetated area shall be planted with trees and shrubs. The plantings may be arranged in clumps, blocks, or strips intermingled within open grass/legume areas.

(b) Plant species which provide special benefit as food or cover for wildlife shall be a central criteria for selection of plant species for revegetation.

(5) Various wildlife enhancement features and techniques may be allowed, if approved by the cabinet, for the fish and wildlife postmining land use, as well as the other land uses, such as:

(a) Brush piles, not to exceed an aerial coverage of 2,800 square feet;

(b) Windrowed brush;

(c) Rock piles, not to exceed an aerial coverage of 300 square feet;

(d) Permanent impoundments and other open water areas;

(e) Food plots of small grains or similar crops; and

(f) Bird houses or similar structures.

PHILLIP J. SHEPHERD, Secretary

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(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions concerning land use decisions for noncoal mineral operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there will be a small cost to comply with this administrative regulation.

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: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies

known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:070. Revegetation.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions for the reestablishment of vegetation on noncoal mineral operations.

Section 1. General. (1) Each mineral permittee shall establish on all lands disturbed during the course of the mineral operation, a condition which will result in a permanent vegetative cover, effective in controlling erosion, and which supports the approved postmining land use.

(2) Plant species for revegetation shall be selected on the basis of:

(a) Their ability to achieve the approved postmining land use;

(b) Their ability to control erosion, both in the short term and in the future, but which will allow for plant succession for areas to be returned to forest land or fish and wildlife habitat;

(c) Their ability to promote soil rebuilding; and

(d) Their benefit to wildlife.

(3) Regraded areas shall be seeded or planted as soon as possible; however, the seeding or planting shall be conducted during the appropriate time of year for the plant materials selected in accordance with accepted agricultural or reforestation practices.

(4) Experimental seeding or stocking of trees or shrubs, not typically used, may be allowed if no more than twenty (20) percent of the permit area is seeded or planted with these species; except that, any species used shall meet the requirements of subsection (1) of this section, shall not be in violation of applicable state and federal introduced species statutes, and are not considered poisonous or noxious.

(5) Roads shall be seeded to legumes and perennial grasses only, unless the cabinet determines that the roadway will not contribute to significant off site damage to the public, the environment, or adjacent property owners if left unreclaimed.

(6) If conditions warrant, the cabinet may allow exceptions to this administrative regulation, if the exceptions are consistent with 405 KAR Chapter 5.

Section 2. Soil Stabilization and Amendments. Liming, fertilization, mulching and related practices shall be conducted in accordance with 405 KAR 5:060, Section 4.

Section 3. Revegetation Success. (1) Success of revegetation shall primarily be determined on the basis of ground cover, and if applicable, tree and shrub stocking.

(2) Ground cover.

(a) For establishing ground cover for the various postmining land uses, at least four (4) grass and legume species shall be seeded, one (1) of which may be a quick cover species. At least one (1) permanent legume species, in addition to two (2) or more permanent grasses, shall be required for the pastureland postmining land use.

(b) At least one (1) quick cover grass or legume species shall be seeded. However, annual grasses and small grains shall be considered only as a tool in establishing temporary vegetative cover for restoration, and shall not be included in the evaluation of revegetation success.

(c) Ground cover shall be at least ninety (90) percent for areas where the postmining land use is pastureland, or where the area will be seeded to grasses and legumes under the cropland land use.

(d) Ground cover shall be at least eighty (80) percent for all other postmining land uses.

(e) For the selection of ground cover species, the mineral permittee shall consider, but not necessarily be limited to, the seeding mixtures listed in Appendix A of this administrative regulation.

(3) Tree and shrub stocking.

(a) For areas to be reforested, at least 450 trees or shrubs shall be present per acre, including volunteers, during the success evaluation required under Section 4 of this administrative regulation; except, where a greater stocking rate is required for shrub plantings for wildlife pursuant to paragraph (d) of this subsection. A lesser stocking rate may be approved by the cabinet if the tree or shrub planting is only for cosmetic purposes or for similar reasons.

(b) At least four (4) species of trees or shrubs shall be stocked for areas to be reforested with each of the four (4) principal species comprising at least ten (10) percent of the total stocking, of which none shall exceed fifty (50) percent of the total stocking. A lesser diversity may be approved by the cabinet if tree or shrub planting is only for cosmetic purposes or for similar reasons.

(c) Of the four (4) or more species referenced in paragraph (b) of this subsection, at least one (1) conifer species and at least one (1) hardwood or mast producing species shall be selected for the forest land and fish and wildlife land uses. For forestland, at least fifty (50) percent of the woody plants shall be trees.

(d) For areas within the permit boundary where shrubs, and no trees, are stocked for wildlife a stocking rate of 600 stems per acre shall be required.

(e) If used, black locust (Robina psuedoacacia) shall not exceed twenty-five (25) percent of the woody plant mixture; and European black alder (Alnus glutinosa) shall not exceed fifty (50) percent of the total woody plant mixture.

(f) Black locust shall not be intermixed with sycamore (Platanus occidentalis) or cottonwood (Populus deltoides), but may be planted within portions of the permit area where sycamore and cottonwood are not stocked.

(g) Black locust seed shall be scarified, except if used in fall and spring seeding.

(h) All trees and shrubs counted for success shall be alive and healthy.

(i) Only canopy forming trees shall be stocked for a postmining land use of forest land.

(k) Tree and shrub stocking for wildlife may include border plantings, clump plantings, or strip plantings.

(l) For areas to be reforested, the use of competitive ground cover species such as KY 31 tall fescue (Festuca arundinaria), crown vetch (Coronilla varia), alfalfa (Medigo spp.), and the nonprostate, highway variety of sericea lespedeza (Lespedeza cuneata) shall be limited.

(m) The area above the highwall on any water impoundment shall be planted with trees in order to provide a protective barrier and screen.

(n) On very stony areas that cannot be hand planted without difficulty, direct seeding of woody species will be permitted; otherwise, woody species shall be hand planted, except for black locust.

(4) If a seeding mixture other than one established in Appendix A is chosen, for guidance in selecting woody species, and for assistance in other areas of revegetation, the mineral permittee shall consult published reclamation documents. The information may be obtained from the cabinet.

(5) Bare areas within the revegetated area shall not exceed one-fourth (.25) acre in size.

(6) Where a seam or stratum of solid rock at the surface makes revegetation impractical, none shall be required.

Section 4. Inspection and Reporting Procedures. (1) When planting is completed a planting report shall be filed with the cabinet. The division's planting report form shall be used for compiling this information.

(2) Inspection and evaluation for vegetation success shall be made during appropriate seasons in order to determine if satisfactory vegetation has been established. In no instance shall this inspection be made until after the completion of two (2) growing seasons. The appropriate report forms shall be used for compiling this information.

(3) The following form is hereby incorporated by reference: Noncoal Planting Report, NCR-18, March, 1990.

(4) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

APPENDIX A OF 405 KAR 5:070
RECOMMENDED HERBACEOUS MIXTURES
FOR REVEGETATION

Note: A species enclosed in parenthesis may be substituted for the species to the left. Its seeding rate is enclosed in parenthesis.

Species Mixture	Seeding Rate (Pounds/acre PLS)
Spring - February 15 to May 15	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
White or Ladino clover	1
Red clover	4
Korean or Kobe lespedeza or mix of these	10
3. Orchardgrass	10
Birdsfoot trefoil (Alfalfa)	8 (15)
Red clover	6
4. Wheat (Spring oats)	25 (32)
Switchgrass	10
Indiangrass	10
Big bluestem	5
Little bluestem	5
Birdsfoot trefoil	6

Except for mixture 4, add one (1) of the following quick cover species to the selected permanent spring seeding mixture:

Wheat (before April 15)	30
Spring oats (before April 15)	32
Balbo rye (before April 15)	30
Perennial ryegrass	10
Annual ryegrass	5
Weeping lovegrass (after April 1)	2

Summer - May 15 to August 1

Orchardgrass	10
Korean or Kobe lespedeza or mix of these	15
Red clover	4
White clover (Birdsfoot trefoil)	1 (6)
Alfalfa	12

Add one (1) of the following quick cover species to the permanent summer seeding mixture:

Sorghum	20
Foxtail (German) millet	12
Japanese millet	15
Soybeans	40
Cowpeas	40
Pearl millet	10

Fall - August 1 to October 1

1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
Alfalfa (Birdsfoot trefoil)	15 (8)
Red clover	6
3. Deertongue	12
Birdsfoot trefoil	8
Red clover	6

Add one (1) of the following quick cover species to the selected permanent fall seeding mixture:

Winter wheat	30
Balbo rye or Winter rye	30
Winter oats	32
Perennial ryegrass	10
Annual ryegrass	5

Mixtures for Wet or Poorly Drained Areas and Pond Borders

Spring - February 15 to May 15

Japanese millet	10
Redtop (Reed canarygrass)	3 (15)
Alsike clover	4
Common annual lespedeza (quick cover species)	10

Fall - August 1 to October 1

Redtop	3
Reed canarygrass	15
Alsike clover	6
Common annual lespedeza (quick cover species)	10

Mixture for Areas to be Stocked With Woody Plants

Spring or Fall Seeding

Redtop	3
Perennial ryegrass	5
Birdsfoot trefoil (Appalow lespedeza)	10 (20)
Foxtail millet (quick cover species)	5

If both Appalow lespedeza and birdsfoot trefoil are used, cut their seeding rates in half.

Note: Seeding Rates are for Pure Live Seed. Seeding rates of the permanent species can be increased if desired, but do not exceed the seeding rate of the temporary species.

Use only one (1) of the temporary species at the rates shown. If more than one (1) are used, reduce the seeding rates of each temporary species appropriately.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions for the reestablishment of vegetation on noncoal mineral operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. For those mineral operations that are newly regulated there will be some cost to comply with this administrative regulation, but the costs should not be a large amount.

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: The mineral operator shall file a planting report with the cabinet.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:075. Contemporaneous reclamation.

RELATES TO: KRS 350.010(2), 350.240, 350.300
STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300
NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth performance standards for timing of reclamation.

Section 1. Contemporaneous Reclamation. (1) On lands where the method of mineral operation produce a bench or where the surface mining is done on the contour, grading shall be kept current with the removal of the mineral, which shall mean within ninety (90) days following the mineral removal. Where special conditions warrant, these requirements may be modified by the cabinet.

(2) On lands where the method of mineral operation is of the quarry type that produces a deep pit, the final reclamation of the site shall follow completion of mining within 180 days.

(3) On lands where the method of mineral operation is of the underground type, the final reclamation of the site shall follow completion of mining within 180 days.

Section 2. (1) The following form is hereby incorporated by reference: Request for Noncoal Reclamation Deferral, NCR-15, March, 1990.

(2) This form may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. SHEPHERD, Secretary
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 14, 1994 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:
CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk
(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth performance standards for timing of reclamation.
(a) Direct and indirect costs or savings to those affected:
1. First year: The requirements for timing of grading are the same as previous administrative regulations for clay mines that produce a bench or that mine on the contour, so there will be no new costs to those types of operations. There are new provisions applicable to other types of mineral operations that set a time limit for grading, but it is not expected that this will impose any significant cost to the mineral operations. Other regulations require that grading be done, this administrative regulation merely sets a time limit to complete the work.
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: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current

regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:080. Reclamation bond.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions concerning when bond is required, bond amount and how it is to be paid, and bond forfeiture for noncoal mineral operations.

Section 1. Applicability. No reclamation bond shall be required except if the cabinet:

(1) Finds the mineral operation to be temporary; or

(2) Finds that the applicant previously has not had a mineral operation in the Commonwealth of Kentucky with a compliance record acceptable to the cabinet.

Section 2. Bond Amount. (1) If a reclamation bond is required, pursuant to Section 1 of this administrative regulation, the mineral operator shall file, with the cabinet, a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the penal sum of not less than $100, nor more than $500 for each acre or fraction thereof, with a minimum bond of $2,000, for the permitted area.

(2) A mineral permittee may request reduction of the required reclamation bond amount at any time if the mineral permittee's method of mineral operation or other circumstances will reduce the maximum estimated cost to the cabinet to complete the reclamation responsibilities and if the mineral operation complies with all applicable statutes and administrative regulations and the permit plan.

Section 3. Type of Payment. (1) Reclamation bond shall be either a surety bond or a cash bond which may include:

(a) Certificates of deposit;

(b) Letters of credit;

(c) Acceptable escrow accounts; or

(d) A combination of these bonding methods.

(2) If a surety bond is filed, it must be accompanied by a power of attorney affidavit allowing the surety to act on behalf of the mineral permittee with respect to reclamation.

Section 4. Bond Forfeiture. (1) The cabinet shall have the authority to forfeit a bond if the mineral operation is not conducted in accordance with the statutes, administrative regulations, and the permit plan as approved by the cabinet.

(2)(a) The entire bond may be forfeited and deposited in an appropriate account for use in the payment of all costs associated with the reclamation and restoration of the permit area to which the forfeited bond applies.

(b) If forfeiture of the bond is required, the cabinet shall send written notification by certified mail, return receipt requested, to the mineral permittee and the surety holding the bond of the cabinet's decision. This notification shall:

1. Explain the reasons for the forfeiture;

2. Indicate the amount to be forfeited; and

3. Advise the mineral permittee and those responsible for the bond of their right to a hearing.

Section 5. Bonding Forms. (1) The following forms are hereby incorporated by reference:

(a) Noncoal Performance Bond, NCR-9, February, 1992.

(b) Letter of Credit, NCR-10, March, 1990.

(c) Escrow Agreement, NCR-11, March, 1990.

(d) Request for Bond Release, NCR-12, March, 1990.

(2) These forms may be reviewed or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions concerning when bond is required, bond amount and how it is to be paid, and bond forfeiture for noncoal mineral operations.

(a) Direct and indirect costs or savings to those affected:

1. First year: Except for those few new mineral operations mentioned above that will be regulated for the first time, there generally will be no new costs to those affected. Even for those mineral operations that are newly regulated there likely will be no cost to comply with this administrative regulation, since few of these will be required to post a reclamation bond.

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: There are some forms required under this administrative regulation relating to filing a bond.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated, but few of these are likely to have a bond required.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The cabinet may incur some additional paperwork if there are any additional operations that are required to file a reclamation bond.

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? Yes. This administrative regulation only requires a reclamation bond for temporary mineral operations and for applicants that previously have not had a mineral operation ion the Commonwealth of Kentucky with a compliance record acceptable to the cabinet. These are classes of mineral operations that would pose the most risk of failure to reclaim.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:085. Enforcement.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.240, 350.300, 350.990

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures if there is a violation. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. The administrative regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the administrative regulations contained in 405 KAR Chapter 5.

(2) Unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the Commissioner of the Department for Surface Mining Reclamation and Enforcement are deemed the authorized representatives of the cabinet for the purposes of this administrative regulation.

Section 2. Inspections. (1) General. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted such inspections, studies, investigations or other determi-

nations as it deems reasonable and necessary to obtain information and evidence which will ensure that mineral operations are conducted in accordance with the provisions of all applicable statutes and administrative regulations, and all terms and conditions of the permit.

(2) Right of entry and access. Authorized employees of the cabinet shall have unrestricted right of entry to all mineral exploration areas and all parts of the mineral operation for any purpose associated with their proper duties pursuant to this chapter, including but not limited to, making inspections, and delivering documents or information of any kind to persons associated with the exploration or mineral operation.

(3) Timing and frequency of inspections.

(a) The cabinet shall conduct periodic inspections of all mineral operations.

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the cabinet deems these inspections necessary to properly monitor compliance with all applicable laws and administrative regulations.

(c) The cabinet shall have no obligation to give prior notice that an inspection will be conducted or to obtain a warrant.

(4) Citizens request for inspections. Any citizen of this Commonwealth having knowledge that any of the statutes and administrative regulations pertaining to mineral operations are willfully and deliberately not being enforced may bring the failure to enforce to the attention of the cabinet according to the provisions of this administrative regulation.

(a) All requests to enforce the law shall be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law, with sufficient information to identify the statutory provision, administrative regulation, order, or permit condition allegedly violated and the act or omission alleged to constitute a violation.

1. The request shall state the name, address and telephone number of the person making the request.

2. The request shall state the name, address and telephone number of the legal counsel, if any, of the person making the request.

3. The stating of false facts and charges in the affidavit shall constitute perjury and shall subject the affiant to penalties under the law of perjury.

4. The cabinet shall investigate the allegations made in the demand and respond, in writing, to the person making the request. The response shall specifically state the results of the investigation and the action, if any, the cabinet has taken or intends to take.

5. The identity of any person supplying information to the cabinet relating to a possible violation or imminent danger or harm shall remain confidential with the cabinet if requested by that person, unless disclosure is required by law.

(b) If the cabinet refuses a request for a hearing, or delays action for more than sixty (60) days after the request to enforce the provision, the citizen shall have the right to bring an action of mandamus in the circuit court of the county in which the subject mineral operation is being conducted. The action may be brought immediately after a request for enforcement if the violations constitute an imminent threat to the health or safety of the complaining citizen or would immediately affect a legal interest of the complaining citizen.

Section 3. Notice of Noncompliance and Order for Remedial Measures. (1) Any authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of KRS Chapter 350, 405 KAR Chapter 5, any permit condition, or any other applicable statute or administrative regulation.

(2) A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized employee who issued it. The notice shall contain the following information:

(a) The nature of the violations;

(b) The remedial measures required, if any, which may include accomplishment of interim steps, if appropriate;

(c) A reasonable time table for remedial action, if any, which may include a time table for accomplishment of interim steps, if appropriate; and

(d) An adequate description of the portion of the mineral operation to which the notice applies.

(3) An authorized employee may modify an order for remedial measures for good causes.

(4) Extensions and modifications of notices for remedial action. An authorized employee may extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued. The total time for remedial action under the notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice.

(5) Based upon the written recommendation of authorized representative of the cabinet who issued the notice or noncompliance and order for remedial measures, the director of the Division of Field Services may vacate a notice of noncompliance and order for remedial measures determined to be issued in error.

Section 4. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the notice within the time for remedial action established in the notice or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, any condition or practice; any violation of KRS Chapter 350; any violation of 405 KAR Chapter 5; or any violation of a term or condition of the applicable permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he finds, on the basis of an inspection, that mineral operations are being conducted by a person without a valid mineral operations permit for the activities or that exploration operations are being conducted without proper notice of intention to explore or approval for the operations, as applicable, in accordance with this chapter.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the mineral operations to which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he shall also issue a notice of noncompliance and order for remedial measures.

(3) Effect.

(a) The order for cessation and immediate compliance shall

require the cessation of all mineral operations, all exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (4) of this section; or until it is vacated, modified, or terminated by a hearing officer.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless the order states that the reclamation operations and other activities shall cease.

(4) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the director of the division of field services may vacate an order for cessation and immediate compliance determined to have been issued in error.

(5) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a person who has been identified as owning or controlling the mineral permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 5. Notice of Inspection of Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he shall reinspect the areas affected by the mineral operations or the exploration operations on or soon after the date given in the notice or order for completion of remedial measures. At the time of this reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated, initiate an administrative hearing for suspension or revocation of the permit or approval, initiate an administrative hearing for bond forfeiture, or initiate administrative hearings for other appropriate relief.

Section 6. Service of Notices and Orders. (1) Any notice of noncompliance and order for remedial measures, any order for cessation and immediate compliance, and any notice of inspection of noncompliance shall be served on the person to whom it was issued or the person's designated agent promptly after issuance.

(2) Each notice or order shall be served by hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the mineral operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For mineral operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the mineral permittee as identified on the permit or in the application; or, if no address is identified for the mineral permittee in the application, to such other address as is known to the cabinet. If no person is present at the site of the mineral operations, services by mail shall by itself be sufficient notice.

(3) Designation by any person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 5:085, shall be made a part of the applicable permit application. The person shall continue as agent for service of process until written revision of the permit is approved which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to any person having an interest which is or may be adversely affected by the mineral operations and any person having an interest in the permit or exploration.

Section 7. Penalties. The cabinet may assess penalties pursuant to KRS 350.990.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for

Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures if there is a violation. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. The administrative regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate the orders or notices.

(a) Direct and indirect costs or savings to those affected:

1. First year: Since this administrative regulation establishes the procedures that the cabinet must follow in inspection and enforcement, there are no direct costs to those affected. There will be indirect costs to those affected if they fail to comply with the regulatory program and the cabinet issues enforcement orders to compel compliance or if penalties are assessed pursuant to KRS 350.990.

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: A citizen may request, in writing, that an inspection of a mineral operation be conducted if he has knowledge that the administrative regulations are not being enforced.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a small increase in the costs to the cabinet due there being approximately 30 additional mineral operations that will be regulated.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The only new paperwork provision in this administrative regulation is the authority to issue an order for cessation and immediate compliance.

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:095. Administrative hearings, informal settlement conferences, and general practice provisions.

RELATES TO: KRS 350.010(2), 350.240, 350.300, 350.990, 224.10-410

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.029, 350.050, 350.0301, 350.240, 350.300

NECESSITY AND FUNCTION: KRS Chapter 350, in pertinent part, requires the cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth provisions governing requests for administrative hearings, initiation of administrative hearings by the cabinet, informal settlement conferences, procedures for the conduct of administrative hearings, service, and administrative hearings for orders to abate and alleviate.

Section 1. Conduct of Administrative Hearings. (1)(a) Requests for an administrative hearing by persons other than the cabinet. Any person aggrieved by an order or determination of the cabinet may request in writing that an administrative hearing be conducted by the cabinet. The request shall be filed with the Office of Administrative Hearings in Frankfort. The request for an administrative hearing shall

include a short and plain statement identifying the basis of the request and the order or determination being contested. If the request for an administrative hearing involves a notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment, the request shall plainly identify the notice or order being contested. The request shall not operate as a stay of any order or notice. The right to demand an administrative hearing shall be limited to a period of thirty (30) days after the requester has had actual notice of the action, or could reasonably have had the notice.

(b) Burden of proof. In review of notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice, order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner. In all other cases where the administrative hearing is requested by persons other than the cabinet, the petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

(2) Initiation of an administrative hearing by the cabinet.

(a) The cabinet may initiate an administrative hearing and may seek suspension or revocation of the permit and forfeiture of the bond if:

1. It has reason to believe that a violation of KRS Chapter 350, 405 KAR Chapter 5, or a permit condition has occurred or is occurring; or

2. A mineral permittee has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by a final order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. The cabinet has reason to believe that additional remedies should be sought or that an order should be entered against any person to protect the environment or the health and safety of the public; or

4. The criteria of 405 KAR 5:080 apply.

(b) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense.

(3) At any administrative hearing held pursuant to subsection (1) or (2) of this section, the cabinet may seek any combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;

(e) Any other relief to which it may be entitled by KRS Chapters 224 and 350.

(4) If the cabinet revokes or suspends the permit, mining operations on the permit area shall immediately cease, and the mineral permittee shall:

(a) If the permit is revoked, complete reclamation within the time specified in the order; or

(b) If the permit is suspended, complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order.

(5) Informal settlement conferences. As an alternative to the administrative hearings provided at subsection (1) of this section, a permittee or other person issued a notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment may request an informal conference with the director, Division of Field Services, by submitting a written request for an informal conference to the office of the director. The time for requesting an informal conference shall be limited to a period of thirty (30) days following issuance of the notice of noncompliance, order for cessation and immediate compliance or proposed penalty assessment. A request for informal conference shall not toll the time for requesting an administrative hearing pursuant to subsection (1) of this section.

(6) Administrative summons. Upon request pursuant to subsection (1) of this section, or upon initiation by the cabinet pursuant to subsection (2) of this section, the cabinet shall schedule an administrative hearing before the cabinet to be held not less than twenty-one (21) days after the notice of demand for an administrative hearing, unless the person complained against waives, in writing, the twenty-one (21) day period. The administrative summons, including a notice of administrative hearing, shall be served in accordance with Section 2 of this administrative regulation and shall include the following: a statement of the time, place, and nature of the administrative hearing; a statement of the legal authority for the administrative hearing; reference to the statutes and administrative regulations involved; and a short statement of the reason for granting of the administrative hearing. For all administrative hearings initiated pursuant to subsection (2) of this section, notice shall also be mailed to any intervenors, and shall be posted at the department's appropriate regional office.

(7) Prior to an administrative hearing under this administrative regulation, and upon seven (7) days' written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification of the issues, consolidation of actions, admission of facts and documents which will avoid unnecessary proof, limitation of the number of witnesses, and other matters as will aid in the disposition of the matter. Final disposition of the matter may be made at the conference by stipulation, settlement, agreed order, summary disposition, or default for nonappearance. The parties may hold additional conferences as may be proper to resolve any issue in dispute.

(8) Any party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The cabinet may compel the attendance of witnesses and the production of documents by the issuance of subpoenas. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and 400 KAR 1:040 shall apply to cases before the cabinet, consistent with KRS Chapters 224 and 350. The hearing officer shall permit any party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for default.

(9) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. If necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except if precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, if an administrative hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in preliminary reports or otherwise, of the

material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(10) Each administrative hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. The record of the administrative hearing, consisting of: all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; proposed findings and recommended orders; and legal briefs, shall be open to public inspection and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS Chapter 224. If certified by the cabinet as a true and correct copy of the testimony, the transcript shall constitute the official transcript of the evidence.

(11)(a) After the administrative hearing, the hearing officer shall issue a determination based on the preponderance of evidence appearing in the record as a whole. The determination shall set forth whether, in fact, the violation did occur. If the violation occurred, the determination shall specify a recommended penalty and recommended remedial or compliance actions to be taken by the mineral permittee or the person conducting the mineral operation.

(b) In addition to the requirements of paragraph (a) of this subsection:

1. The hearing officer may recommend suspension or revocation of the permit or forfeiture of the bond if the mineral permittee has violated any provision of KRS Chapter 350; 405 KAR Chapter 5; a permit condition; or a final order, including failure to pay a civil penalty assessed in a final order of the cabinet;

2. The hearing officer may recommend, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future mineral operations;

3. The hearing officer may recommend that a person or persons be required to abate, repair, alleviate, or prevent violations of KRS Chapter 350; 405 KAR Chapter 5; or a permit condition, if the violations are found to exist on the basis of a preponderance of the evidence; and

4. For permit determinations, the hearing officer may recommend that a permit was issued in violation of applicable statutory and regulatory criteria, and may recommend suspension or revocation of the permit and may further recommend remedial or compliance actions to be taken by the mineral permittee.

(12) The hearing officer shall recommend the amount of a civil penalty pursuant to KRS 350.990(1) and (2) and the recommendation shall be based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall state with particularity the reason, supported by the record of the administrative hearing, for the penalty assessed in the final written report.

(13) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and a recommended order to the secretary. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall mail, postage prepaid, a copy of the report and recommended order to all parties. The parties may file, within fourteen (14) days of receipt of the hearing officer's report and recommended order, exceptions to the report and recommended order. There shall be no other or further submissions.

(14) The secretary shall consider the report and recommended order and any exceptions filed and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the cabinet's final order, or issue his or her own final order.

(15) The cabinet shall mail the final decision of the cabinet to the parties. If any extension of time is granted by the secretary for a hearing officer to complete the report, the cabinet shall notify all parties at the time of the granting of the extension.

(16) The secretary shall not grant an extension of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) extensions shall be granted.

(17) A final order of the cabinet shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the cabinet and the facts and law upon which the decision is based.

(18) There shall be no ex parte communications between the parties or representatives of the parties and the hearing officer.

(19) Any person aggrieved by a final order of the cabinet may seek judicial review as set forth in KRS 224.10-470 (pertaining to abate and alleviate orders), 350.0305(2) and 350.032(2).

(20) Nothing herein shall prevent the cabinet from taking appropriate action in circuit court.

Section 2. Service. (1) Except as provided in subsections (3) and (4) of this section, any proposed penalty assessment, notice of administrative hearing, or other document required to be served in accordance with this section shall be served by one (1) of the following methods:

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. Service by certified mail is complete upon delivery of the envelope or as provided by subsection (2) of this section. The return receipt shall be proof of the time, place and manner of service. To the extent that the United States postal regulations permit authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by the authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to any person authorized by the secretary or by any statute to deliver them, or to any person authorized to deliver service for the purpose of an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(2) Service is effective upon acceptance of the document by any mineral permittee at the permit address, upon refusal to accept the document by any person at the permit address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of the acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) In addition to the provisions of subsection (1) through (3) of this section, the provisions of 400 KAR 1:030, shall apply to service resulting from or attendant to administrative hearings under this administrative regulation.

Section 3. Temporary Relief. (1)(a) Pending completion of the investigation and administrative hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or the administrative regulations.

(b) A petition for temporary relief shall be in writing, shall be filed with the Office of Administrative Hearings, with notice to the Department of Law, and shall contain the following:

1. A detailed statement setting forth reasons why temporary relief should be granted;

2. A showing that there is a substantial likelihood that the petitioner will prevail on the merits upon a final determination of the proceeding;

3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources;

4. If the petition relates to an order for cessation and immediate compliance, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and

5. A statement of the specific relief requested.

(2) A hearing officer may grant temporary relief after making a written finding that the relief is warranted, and shall state the reasons for the finding. The hearing officer shall grant or deny relief expeditiously; however, if the petition relates to an order for cessation and immediate compliance relief shall be granted or denied within five (5) working days of receipt by the office of the petition. A hearing officer may grant temporary relief from notices and orders issued pursuant to 405 KAR Chapter 5, upon conditions as are deemed appropriate, only upon a finding that:

(a) The parties were given an opportunity to be heard in a location acceptable to both the cabinet and the petitioner;

(b) The petitioner has shown that there is a substantial likelihood that the findings on the merits in an administrative hearing conducted before the cabinet will be favorable to the petitioner;

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources; and

(d) The relief sought is not the issuance of a permit if a permit has been denied, in whole or in part, by the cabinet, nor the release of a bond if a bond release request has been denied.

Section 4. Orders to Abate and Alleviate. If the secretary issues an order to abate and alleviate pursuant to KRS 224.10-410 the cabinet shall provide the permittee or person to whom the order was issued an opportunity to be heard not more than ten (10) days following issuance of the order, unless waived in writing by the permittee or person. The order to abate and alleviate shall be filed with the Office of Administrative Hearings, which shall issue an administrative summons pursuant to Section 1(6) of this administrative regulation. Neither the scheduling nor holding of an administrative hearing pursuant to this section shall operate to terminate or stay the order, nor operate to relieve the permittee or person(s) named in the order from performing the affirmative obligations imposed in the order to abate and alleviate, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: This proposed administrative regulation along with the other proposed administrative regulations of 405 KAR 5:001 through 5:095 applies to noncoal mineral operations. This proposed regulatory package replaces 405 KAR 5:010 and 5:020 which are proposed to be repealed at 405 KAR 5:096. The regulated entities are noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel, surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of fluorspar and other vein minerals. Under these proposed administrative regulations, mineral operations now include the surface disturbance of underground mining as well as strip mining. As of April 1994, there were 191 mineral operations under permit and being regulated by the cabinet. Under these new administrative regulations there will be a few additional operations that will come under the cabinet's jurisdiction. The cabinet expects that there will be approximately 20 underground limestone quarries and approximately 10 sand and gravel dredging operations that will be regulated for the first time. Some of the underground limestone quarry operations have previously sought and obtained permits under the cabinet's existing administrative regulations voluntarily, even though the current administrative regulations do not apply to underground mineral operations. Although there are a few new provisions, this proposed administrative regulation and the other proposed administrative regulations specified above generally do not impose new requirements; instead they codify those requirements that the cabinet has imposed through the permit process. The existing administrative regulations have not been updated since 1975, but the regulatory program of the cabinet has evolved substantially. This has been possible because there generally is little controversy regarding the cabinet's regulation of the noncoal mineral industry and the level of compliance by the industry is remarkably high. These proposed administrative regulations will achieve compliance with KRS Chapter 13A by codifying the regulatory program. This administrative regulation sets forth provisions governing the issuance of the various notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures if there is a violation. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of an imminent danger to the health or safety of the public or significant, imminent environmental harm to land, air, or water resources. The

administrative regulation sets forth provisions governing requests for hearings, initiation of hearings by the cabinet, procedure for the conduct of hearings, service, and hearings for orders to abate and alleviate.

(a) Direct and indirect costs or savings to those affected:

1. First year: If a person affected finds themselves in a situation whereby they are participating in a hearing procedure, there will be some direct cost involved similar to those involved in any other administrative hearing procedure. It may be that there will be some substantial indirect cost involved depending on the outcome of the hearing regarding remedial orders, permit suspensions, bond forfeitures, civil penalties, etc.

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: Paperwork requirements are established in order to provide for an orderly hearing process, similar to any other administrative hearing process.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet does not expect any significant increase in cost due to this administrative regulation.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork requirements are established in order to provide for an orderly hearing process, similar to any other administrative hearing process.

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose these administrative regulations and to include the surface effects of underground mineral operations and sand and gravel dredging operations.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because there are no classes of regulated entities subject to this administrative regulation that could be identified for tiering. The industries subject to this administrative regulation all contribute similarly to the environmental problems this administrative regulation was designed to address.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 5:096. Repeal of 405 KAR 5:010 and 405 KAR 5:020.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS Chapter 13A, KRS 350.028, 350.029, 350.240, 350.300

NECESSITY AND FUNCTION: 405 KAR 5:010 and 405 KAR 5:020 are no longer required because they have been superseded by the adoption of a new comprehensive regulatory program for noncoal mineral operations. This administrative regulation repeals those administrative regulations.

Section 1. Repeal. 405 KAR 5:010, Clay mining; reclamation of areas disturbed and 405 KAR 5:020, Fluorspar, sand and gravel, stone and rock asphalt mining; reclamation of disturbed areas, are hereby repealed.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 1 p.m. (Eastern time) Monday, August 29, 1994 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 August 24, 1994. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by August 24, 1994, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

WRITTEN COMMENTS: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (Eastern time) on August 29, 1994. 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:

CONTACT PERSON: George Risk, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, KY 40601, (502) 564-2377.

REGULATORY IMPACT ANALYSIS

Agency Contact: George Risk

(1) Type and number of entities affected: 405 KAR 5:010 and 405 KAR 5:020 will no longer be required because they will have been superseded by the adoption of a new regulatory program for noncoal mineral operations. This administrative regulation repeals those administrative regulations, and there are no entities affected by this administrative regulation. The effects of the proposed regulatory program are discussed in the Regulatory Impact Analyses for 405 KAR 5.001 through 5.095.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: This proposed administrative regulation will have no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered not amending the current regulatory program and continuing as has been done now for a number of years. However, given the requirements of KRS Chapter 13A, the desire of the cabinet to set forth the policies of the cabinet clearly, and the desire expressed by some in the industry that the focus of regulation of the noncoal mineral industry be at the state level rather than at the local level, it was decided that the best course of action was to propose the administrative regulations 405 KAR 5:001 through 5:095 and to repeal 405 KAR 5:010 and 5:020.

(5) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations, or governmental policies known to be in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: There are no other comments.

TIERING: Was tiering applied? No. Tiering is not appropriate for this proposed administrative regulation because it repeals two administrative regulations.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement

601 KAR 15:010. Disciplinary actions relating to employees commissioned pursuant to the provisions of KRS 281.770.

RELATES TO: KRS 281.770, 1994 Ky. Acts ch. 317

STATUTORY AUTHORITY: 1994 Ky. Acts ch. 317

NECESSITY AND FUNCTION: KRS 18A.095 specifies that employees of the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement commissioned pursuant to KRS 281.770 be disciplined under the provisions of KRS Chapter 281 rather than KRS 18A.095. This administrative regulation sets forth the administrative procedure to be followed by the Department of Vehicle Regulation in imposing disciplinary action against Motor Vehicle Enforcement commissioned employees and the procedures before the Trial Board.

Section 1. Definitions. (1) "Class A violation" means any violation for which the disciplinary action is to be dismissal, reduction in grade, salary reduction of more than ten (10) percent, temporary transfer of work station for up to sixty (60) days, or suspension without pay of more than twenty (20) days.

(2) "Class B violation" means any violation for which disciplinary action is to be reduction in grade, salary reduction of ten (10) percent or less, temporary transfer of work station for up to thirty (30) days, or suspension without pay of five (5) to twenty (20) days.

(3) "Class C violation" means any violation for which the disciplinary action is to be a written reprimand or a suspension without pay of four (4) days or less.

(4) "Commissioned employee" means an employee of the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement appointed pursuant to KRS 281.770.

(5) "Complaint" means an allegation preferred against a commissioned employee which may result in a charge against that commissioned employee pursuant to 1994 Ky. Acts ch. 317.

(6) "Disciplinary action" means the punishment of a commissioned employee found guilty of one (1) or more charges, to include the specific penalties found in 1994 Ky. Acts ch. 317, §2(17).

(7) "Felony" means as defined in KRS 431.060 and 500.080.

(8) "Internal affairs" means the Director of the Division of Motor Vehicle Enforcement, the commissioned employees designated by the director to investigate complaints, and the administrative staff designated by the director to process complaints, charges, and disciplinary actions.

(9) "Misdemeanor" means as defined in KRS 431.060 and 500.080.

(10) "Probation" means a condition under which disciplinary action against a charged commissioned employee is suspended provided the commissioned employee incurs no further charges; if further charges are incurred, the probation is considered to have been violated, and disciplinary action for the original charge(s) will proceed.

(11) "Summary suspension" means an immediate suspension from duty imposed by a supervisor on a subordinate commissioned employee when the supervisor deems the suspension is necessary for the preservation of public order, the protection of the physical safety of an individual, to prevent any violation of law by the commissioned employee, or as a result of any violation of law by the commissioned employee.

(12) "Supervisor" means any commissioned employee who:

(a) Has been designated by the Director of the Division of Motor Vehicle Enforcement to exercise command authority over any region, branch, post or section of the Division of Motor Vehicle Enforcement;

(b) Has been designated by an officer of superior rank to exercise supervisory authority; or

(c) Any commissioned employee who holds the rank of sergeant or above.

(13) "Violation" means as defined in KRS 431.060 and 500.080.

Section 2. Time Limitation on Disciplinary Action. (1) Except as set forth in subsection (2) of this section, review of or investigation into an alleged act of misconduct shall be initiated within one (1) year after the date of the alleged act of misconduct.

(2) A review of or investigation into an alleged act of misconduct classified as a Class A violation may be initiated at any time.

(3) A review of or investigation into an alleged act of misconduct is initiated when a complaint is received and recorded by Internal Affairs or when the commissioned employee suspected of wrongdoing is notified in writing that he is under investigation, whichever occurs first.

Section 3. Criminal Charges. (1)(a) Any commissioned employee who is arrested or indicted for any offense classified as a felony shall:

1. Be summarily suspended from duty by his immediate supervisor, any supervisor in his chain of command, or the commissioner; and

2. Not exercise any of the powers of a peace officer for the duration of the suspension.

(b) The suspension shall be with pay unless the commissioner determines that it shall be without pay.

(c) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who effects the suspension.

(d) The commissioner may assign the commissioned employee suspended pursuant to this subsection to clerical or administrative duties during the period of suspension.

(e) The suspension shall remain in effect until a final determination of the criminal charge has been made by the court of jurisdiction, or until the commissioner determines that a return to full duty status is appropriate under the circumstances.

(f) The department may proceed with disciplinary action prior to a final disposition of the criminal charge.

(2)(a) Any commissioned employee who is arrested, summoned or cited for an offense classified as a misdemeanor or violation may be summarily suspended from duty by his supervisor if, in the exercise of his discretion, the supervisor believes that this suspension

from duty is in the best interests of the department or the commissioned employee.

(b) The commissioned employee under suspension shall not possess or attempt to exercise any of the powers of a peace officer for the duration of the suspension.

(c) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who effects the suspension.

(d) The suspension shall be with pay unless the commissioner determines that it shall be without pay.

(e) The supervisor may assign the commissioned employee to administrative or clerical duties during the period of suspension.

(f) The suspension may be rescinded at any time by the supervisor, when in his discretion he determines that the purpose for the suspension has been served.

(g) The department may initiate disciplinary action prior to a final disposition of the charge.

Section 4. Summary Suspension. (1) A supervisor may summarily suspend from duty any subordinate commissioned employee:

(a) When the suspension is necessary for the preservation of public order;

(b) To protect the physical safety of an individual;

(c) To prevent a violation of law by the commissioned employee; or

(d) As a result of any violation of law by the commissioned employee.

(2) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who effects the suspension.

(3) A commissioned employee under summary suspension shall be relieved from duty and shall not exercise the powers of a peace officer until he is returned to duty.

(4) A summary suspension shall be with pay unless the commissioner determines that it shall be without pay.

(5)(a) Any supervisor who summarily suspends a subordinate commissioned employee shall immediately notify the commissioner, through the chain of command, of the action taken and the material circumstances surrounding the action.

(b) This notification shall be followed with all due speed by a written report to the commissioner which shall describe with specificity the reasons for the suspension.

(c) A copy of this report shall be forwarded directly to Internal Affairs for investigation and to the commissioned employee who was summarily suspended.

Section 5. Complaints Against Commissioned Employees. (1) Each written complaint received by the commissioner or charge filed by the commissioner regarding a commissioned employee shall be reviewed and classified according to degree of seriousness by Internal Affairs.

(2) A person making a written complaint shall be advised in writing by Internal Affairs of the receipt of the complaint.

(3)(a) A commissioned employee against whom a complaint is preferred or a charge filed by the commissioner shall be provided with a copy of the complaint by Internal Affairs.

(b) Internal Affairs may waive this requirement only if there are reasonable grounds to believe that the commissioned employee will attempt to obstruct the investigation.

(c) If Internal Affairs waives notice to the commissioned employee of the complaint or charge, the reasons for the waiver shall be set forth in writing and made available to the commissioned employee following completion of the investigation.

(4) A copy of the complaint or charge notification to the commissioned employee shall be sent by Internal Affairs to the commissioned employee's immediate supervisor.

(5) Verbal complaints may be recorded and transcribed for signing by the complainant.

(6) Unsigned complaints shall not be made a matter of record unless good cause exists to believe the complaint to be true and the alleged misconduct constitutes a Class A violation, in which case the supervisor shall initiate a written complaint. Persons who make verbal complaints shall be informed of this policy.

(7) A supervisor may make an inquiry into any alleged unwritten or unsigned statement of misconduct to determine if the supervisor should file a written complaint with the commissioner.

(8) Any commissioned employee who has knowledge of or observes a violation of the Standards of Conduct set forth in Section 13 of this administrative regulation by another commissioned employee may initiate disciplinary action through the filing of a written complaint.

(9) A supervisor who initiates disciplinary action against a subordinate commissioned employee shall do so by the filing of a written complaint with the commissioner.

(10) After receiving notice of a written complaint, the commissioned employee shall have the opportunity to make written response, but shall not be required to do so.

Section 6. Internal Investigation of Complaints. (1) Internal Affairs shall investigate any complaint which, if true, would be a Class A violation. A case number shall be assigned by Internal Affairs to each complaint investigated or referred for investigation. A log shall be maintained by Internal Affairs showing the name of the complainant, the name of the commissioned employee who is the subject of the complaint, the case number, the date received, and the disposition.

(2)(a) Commissioned employees under investigation shall answer all questions specifically directed and narrowly related to the performance of official duty.

(b) Any commissioned employee who refuses to answer any question specifically directed and narrowly related to the performance of official duty on grounds that the answer would tend to incriminate him shall be advised that he may be disciplined for refusing to answer a question that is specifically directed and narrowly related to the performance of duty, and the case shall then be referred to the Office of General Counsel for review and advice prior to any additional questioning or investigation.

(3)(a) The officer from Internal Affairs conducting an internal investigation may interview any other commissioned employee or employee of the Division of Motor Vehicle Enforcement on any matter related to the investigation.

(b) The commissioned employee shall answer truthfully any question relating to the subject matter of the investigation of which he has knowledge.

(c) If the commissioned employee or employee refuses to answer on grounds of privilege or that the answer would tend to incriminate him, the case shall be referred to the Office of General Counsel for review and advice prior to any additional questioning of the witness.

(4) Internal investigations of complaints shall be concluded by a finding that:

(a) The complaint is unfounded;

(b) Insufficient evidence exists to determine the validity of the complaint; or

(c) One (1) or more of the allegations of the complaint have been substantiated.

(5) If one (1) or more of the allegations of the complaint are substantiated, a recommendation shall be made by the Internal Affairs investigator(s) regarding disciplinary action. Recommendations for disciplinary action shall be supported by specific and articulable fact.

(6) Completed Internal Affairs investigations of Class B or C violations with recommended disciplinary action shall be forwarded by the appropriate supervisor through the following channels for review:

(a) Appropriate supervisor's supervisor;

(b) Director of the Division of Motor Vehicle Enforcement;

(c) Internal Affairs; and

(d) Commissioner.

(7) The routing mechanism shall be sealed and marked "EYES ONLY" on the outside of the envelope.

(8) Completed Internal Affairs investigations of Class A violations with recommended disciplinary action shall be forwarded through channels by Internal Affairs to the division director and commissioner.

(9) Completed Internal Affairs investigations with a recommendation of no disciplinary action shall be forwarded through the channel set forth in subsection (6) of this section terminating at the division director for final action.

(10) The notice of final action on disciplinary matters shall be routed by Internal Affairs by the same procedures as the complaints against commissioned employees are routed. All reports of internal investigations shall be filed in Internal Affairs upon conclusion of the investigation.

(11) For purposes of this review process, when an item is marked "EYES ONLY" the individual to whom the item is addressed shall be the only one to open and review it. The individual to whom the item is addressed shall reseal the item and forward it to the next person in the review process.

(12) The complainant may, at the discretion of the commissioner, be informed at the conclusion of the investigation of whether disciplinary action was imposed as a result of the complaint, but shall not be apprised of any details of the investigation.

Section 7. Imposition of Disciplinary Action. (1) Prior to the imposition of any disciplinary action other than a written reprimand, written notice shall be provided to the commissioned employee by the commissioner of the precise form that the disciplinary action will take, together with a specific explanation of the reasons therefore. The notice shall be precise as to the standard of conduct violated and the attendant facts and circumstances.

(2) Within five (5) days after receiving notice of disciplinary action, a commissioned employee may make written response and request that the proposed action be reviewed by an individual member of the trial board prior to imposition. A request for review shall be specific as to the reasons why the proposed action is in error or is unjust.

Section 8. Review of Proposed Disciplinary Action. (1) The individual members of the trial board established pursuant to 1994 Ky. Acts ch. 317, §3 shall be assigned requests for review of proposed disciplinary action on a rotating basis.

(2) The review officer has the following responsibilities and capabilities:

(a) He may interview the commissioned employee who is to be disciplined;

(b) He may interview the Internal Affairs staff who performed the investigation;

(c) He shall conduct a thorough review of the appropriate reports; and

(d) He may interview other commissioned employees or review other reports.

(3) Upon concluding his review, the review officer shall make a recommendation to the commissioner as to whether the proposed disciplinary action should be imposed without change, amended, or rescinded, and shall explain the basis for the recommendation.

(4) The commissioned employee who requested the review shall be provided with a copy of the recommendation.

(5) Within ten (10) days of receiving the recommendation of the review officer, the commissioner shall issue an order setting forth the action to be taken.

Section 9. Board of Appeals. (1) Except for the disciplinary actions which result in a Trial Board pursuant to the provisions of 1994 Ky. Acts ch. 317, §3 or a reprimand, except where the reprimand is for conduct unbecoming as set forth in Section 13 (44) of this administrative regulation, any disciplinary action may be appealed to a Board of Appeals.

(2) The Board of Appeals shall consist of three (3) members of the Trial Board appointed by the commissioner.

(3) The members of the Board of Appeals shall serve for one (1) calendar year from the date of appointment.

(4) Any Board of Appeals member who is disciplined for misconduct shall be removed and a successor appointed to serve the remainder of the term.

(5) Members may serve more than one (1) term.

(6) The commissioner shall designate one (1) of the members to serve as chairman.

(7) A request for appeal shall be filed with the commissioner not later than ten (10) days following the effective date of the disciplinary action.

(8) A request for appeal shall cause a hearing to be held within sixty (60) days from the date of the request.

(9) The appellant shall be notified at least ten (10) days prior to the hearing of the time and location at which the hearing will be held.

(10) The board may not subpoena witnesses, but any witnesses who are employed by the Division of Motor Vehicle Enforcement shall be required to attend and testify if the appellant or the investigating officer requests.

(11) The appellant shall be entitled to review any departmental reports relating to the disciplinary action prior to the hearing, and shall be provided with a copy of the Internal Affairs report.

(12) The appellant may be represented by counsel. The department shall be represented by the Office of General Counsel.

(13) All testimony at the hearing shall be given under oath and recorded.

(14) Any evidence that is relevant and material shall be admissible, including hearsay.

(15) Board members may question the appellant and any witnesses.

(16) The disciplinary action may be reversed, affirmed or modified upon the vote of two (2) of the three (3) board members.

(17) The audio record of the appeal shall be filed in Internal Affairs.

(18) If the appellant wants a transcript of the record, he shall pay for it.

(19) The chairman shall cause an order to be written concerning the proceedings which reports the action taken. This order shall be filed with Internal Affairs and in the office of the Director of the Division of Motor Vehicle Enforcement and shall constitute final administrative action on the case, absent a showing of fraud or duress, in which case another hearing may be held.

(20) All records and reports of proceedings before the Board of Appeals, with the exception of the final order, are confidential.

(21) Decisions of the Board of Appeals may only be appealed to Franklin Circuit Court as provided in 1994 Ky. Acts ch. 317, §3.

Section 10. Retention of Disciplinary Records. (1) All records of disciplinary actions for Class A violations shall be retained by Internal Affairs until ten (10) years after separation or termination of the affected employee.

(2) All records of disciplinary actions for Class B or Class C violations shall be destroyed after the expiration of five (5) years from the effective date of the action.

Section 11. Types of Disciplinary Actions. (1) The appropriate disciplinary action for committing a Class A violation shall be one (1) or more of the following:

(a) Dismissal;

(b) Reduction in grade;

(c) Salary reduction greater than ten (10) percent; or

(d) Suspension from duty without pay for at least twenty-one (21) working days.

(2) The disciplinary action for committing a Class B violation shall

be a suspension from duty without pay for a minimum of five (5) working days and a maximum of twenty (20) working days, a reduction in grade, or a salary reduction of ten (10) percent or less.

(3) The disciplinary action for committing a Class C violation shall be one (1) of the following:

(a) A written reprimand; or

(b) A suspension from duty without pay of four (4) working days or less.

(4)(a) Repeated violations of the standards of conduct shall result in enhanced penalties.

(b) The third disciplinary action in any twelve (12) month period shall be enhanced as follows:

1. A Class C violation shall be treated as a Class B violation; and

2. A Class B violation shall be treated as a Class A violation.

(5)(a) The commissioner may place on probation for a period of up to one (1) year any commissioned employee found to have violated any of the standards of conduct set forth in Section 13 of this administrative regulation.

(b) The commissioner may probate the entire disciplinary action given a commissioned employee, or any part of it.

(c) Determination of what will be probated is at the discretion of the commissioner after consideration of input from the commissioned employee's supervisor, Internal Affairs, and the Director of the Division of Motor Vehicle Enforcement.

(d) The only condition of probation which may be imposed is that the commissioned employee not violate any of the standards of conduct during the probationary period.

(e) The violation of any of the standards of conduct during the probationary period shall cause the probation to be revoked and the original sentence, or remainder thereof, to be imposed.

(f) Probation shall not be granted except on the commissioned employee's admission of guilt to the alleged violation, and shall not be granted for more than one (1) violation in any twelve (12) month period.

(6) Complaints which contain more than one (1) allegation shall be classified according to the most serious violation alleged and shall not be severed for purposes of investigation.

Section 12. Trial Board. (1) If a commissioned employee is entitled to a Trial Board hearing as provided in 1994 Ky. Acts 1994 ch. 317, §3, a Trial Board hearing shall be automatically scheduled unless the disciplined employee, in writing specifically, waives his right to the Trial Board hearing within five (5) days of the effective date of preference of charges.

(2) The commissioner shall serve as Chairman of the Motor Vehicle Enforcement Trial Board.

(3) The commissioner shall rule on all motions except as otherwise provided by law.

(4)(a) The Trial Board hearing shall commence with a reading of the charges by the chairman.

(b) Following the reading of the charges, the defendant commissioned employee shall enter his plea.

(c) If the commissioned employee is not represented by counsel, the chairman shall advise the defendant commissioned employee that he has the right to be represented by private counsel of his choice at his own expense.

(5) The chairman shall swear in the Trial Board members.

(6) The chairman shall consider other preliminary motions by either party.

(7) The order for presentation of evidence and arguments is as follows:

(a) Department opening statement.

(b) Defendant opening statement.

(c) Presentation of evidence by department.

(d) Presentation of evidence by defendant.

(e) Presentation of rebuttal evidence by department.

(f) Presentation of rebuttal evidence by defendant.

(g) Closing statement by defendant.

(h) Closing statement by department.

(8)(a) All witnesses shall be sworn at the time their testimony is offered and shall be separated unless otherwise ordered by the chairman.

(b) The defendant commissioned employee shall be permitted to remain present throughout all proceedings even though he may testify in his own behalf.

(c) The department shall be permitted to have present throughout the proceeding investigative personnel.

(9) At the hearing, all charges shall be put in issue, and evidence at the hearing shall be confined and limited to the issues presented by the written charges. Technical rules of evidence shall not apply.

(10) The attorney for the department shall state to the Trial Board the nature of the charges and the evidence upon which he relies to support it.

(11) The department shall bear the burden of proof and it shall be by a preponderance of the evidence.

(12) The defendant or his attorney may state his defense and the evidence upon which he relies to support it or he may reserve his opening statement until the conclusion of the evidence for the agency.

(13) At the conclusion of all evidence, the chairman shall instruct the Trial Board as to the law of the case, including the issues which are to be decided, the grounds for finding for or against the defendant commissioned employee, and its other duties in considering the case. If the Trial Board consists of seven members, a vote of at least four (4) members concurring shall be necessary to sustain the charges; if five (5) members, a vote of at least three (3) members concurring; and if three (3) members, a vote of at least two (2) members concurring.

(14) If the Trial Board finds the commissioned employee guilty of any one (1) or more charges, it shall fix his punishment by reprimand or suspension for any length of time not to exceed six (6) months, or by reducing the grade if the commissioned employee's classification warrants same, or by combining any two (2) or more punishments, or by reducing the monthly salary of the commissioned employee by not more than twenty (20) percent for not more than six (6) months, or by removing or dismissing the commissioned employee from the service of the agency. The same number of members concurring as provided in subsection (13) of this section shall be necessary to establish the penalty.

Section 13. Standards of Conduct. (1) Conformance to law.

(a) A commissioned employee, whether on or off duty, shall obey all laws of the United States and of any state or local jurisdiction in which the commissioned employee is present.

(b) A conviction for violating any law shall be prima facie evidence of a violation of this standard, but the fact that no conviction is obtained or that no prosecution is initiated, shall not preclude the department from taking disciplinary action for a violation of this standard.

(c) Violation of law is:

1. A Class A violation if the law violated is a felony or a Class A misdemeanor;

2. A Class B violation if the law violated is a Class B misdemeanor; and

3. A Class C violation if the law violated is a violation or local ordinance.

(2) Dishonesty.

(a) Commissioned employees shall at all times be honest and truthful in dealing with their fellow commissioned employees or members of the public and in any written or oral communications.

(b) Upon order of the commissioner, the commissioner's designee, or his supervisor, a commissioned employee shall answer truthfully all questions specifically directed and narrowly related to the scope of employment and operations of the Division of Motor Vehicle

Enforcement which may be asked of him.

(c) Dishonesty is a Class A violation.

(3) Cowardice.

(a) Commissioned employees shall carry out their duties with courage and determination and shall remain firm and steadfast in the face of opposition and danger.

(b) Cowardice is a Class A violation.

(4) Use of force.

(a) Commissioned employees shall use force in accordance with law and division policy, and shall use only that degree of force which is reasonable and necessary under the circumstances.

(b) Use of excessive force is a Class C violation unless the complainant suffered serious physical injury, in which case it is a Class A violation.

(5) Affiliation with a subversive organization.

(a) A commissioned employee shall not in any manner affiliate himself with any organization or group which:

1. Advocates the overthrow of the government of the United States or any state;

2. Has adopted the policy of advocating or approving the commission of acts of force or violence to deny any person his rights under the Constitution of the United States or any state; or

3. Seeks to alter the form of government of the United States or any state by unconstitutional means.

(b) Affiliation with a subversive organization is a Class A violation.

(6) Obstructing an internal investigation.

(a) A commissioned employee shall not destroy, conceal or alter any record, or attempt to coerce or intimidate any witness or potential witness in any internal investigation of alleged misconduct.

(b) Obstructing an internal investigation is a Class A violation.

(7) Negligence.

(a) Commissioned employees shall perform their duties in a competent and efficient manner.

(b) Negligence occurs when, due to a commissioned employee's inaction or failure to perform assigned tasks correctly, an incident takes place which causes harm (physical, financial or otherwise) to a member of the public, a fellow employee, a member of another agency, or the Division of Motor Vehicle Enforcement.

(c) Negligence is a Class A violation.

(8) Insubordination.

(a) Commissioned employees shall promptly obey any lawful orders of a superior officer including orders relayed from a superior officer by a commissioned employee of the same or lesser rank.

(b) Commissioned employees who are given an otherwise proper order which is in conflict with a previous order, or with any administrative regulation, or policy, whether stated in this administrative regulation or elsewhere, shall respectfully inform the superior officer issuing the order of the conflict.

(c) If the superior officer issuing the order does not amend or retract the conflicting order, the order shall be promptly obeyed, with responsibility for the conflict to be on the superior officer issuing the order.

(d) Commissioned employees shall not obey any order which would require them to commit any illegal act.

(e) Insubordination is a Class B violation.

(9) Immoral conduct.

(a) Commissioned employees shall maintain a level of moral conduct in their personal and business affairs which is in keeping with their oath of office and the standards of conduct. (b) Commissioned employees shall not engage in any act of moral turpitude which impairs their ability to perform as law enforcement officers or causes the Division of Motor Vehicle Enforcement to be brought into disrepute.

(c) Immoral conduct is a Class B violation.

(10) Use of intoxicants on duty.

(a) Commissioned employees shall not consume intoxicating beverages while in uniform or on duty except in the performance of duty and while acting under proper and specific orders from a superior officer.

(b) Commissioned employees shall not report for duty, or be on duty, while under the influence of intoxicants to any degree whatever, or with an odor of intoxicants on their breath.

(c) Consumption of alcoholic beverages while on duty is a Class B violation.

(d) Being under the influence of intoxicants while on duty is a Class B violation for the first offense, and a Class A violation for any subsequent offense.

(11) Interference with an official investigation.

(a) A commissioned employee shall not interfere with any case being handled by other commissioned employees of the Division of Motor Vehicle Enforcement or any other governmental agency unless ordered to intervene by a superior officer or under circumstances where the commissioned employee believes that a manifest injustice would result from failure to take immediate action.

(b) Interference with an official investigation is a Class B violation.

(12) Soliciting personal advancement.

(a) A commissioned employee shall not request or utilize the aid of any person outside the Division of Motor Vehicle Enforcement or of any group of persons or organization for the purpose of bettering his position within the Division of Motor Vehicle Enforcement or to secure restoration to a rank, position, or assignment from which he has been removed.

(b) Any violation of Sections 1501 - 1508 of Title 5 of the United States Code, the Hatch Act, shall be considered to be a violation of this section.

(c) Soliciting personal advancement is a Class B violation.

(13) Responsibility of ranking officers.

(a) Ranking officers shall be responsible for the proper enforcement of these standards of conduct.

(b) A ranking officer shall not knowingly permit the violation of any of these standards of conduct by a subordinate or fail to recommend disciplinary action when a violation occurs.

(c) Failure by a ranking officer to properly enforce the standards of conduct is a Class B violation.

(14) Conformance to policies and administrative regulations.

(a) Commissioned employees shall obey and abide by all the policies and administrative regulations of the Division of Motor Vehicle Enforcement, whether stated in this administrative regulation or elsewhere, and whether stated in the form of a policy, memorandum, or any other written or oral directive.

(b) Nonconformance to policies or administrative regulations is a Class C violation.

(15) Use of medication on duty.

(a) While on duty, a commissioned employee shall not use any medication which causes drowsiness or otherwise affects adversely the commissioned employee's ability to operate a motor vehicle safely.

(b) Improper use of medication is a Class C violation.

(16) Use of intoxicants off duty.

(a) Commissioned employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in:

1. Intoxication in public;

2. Any behavior which discredits the commissioned employee or the Division of Motor Vehicle Enforcement; or

3. The commissioned employee being unfit to report for his next regular tour of duty.

(b) Excessive use of intoxicants while off duty is a Class C violation.

(17) Alcoholic beverages and drugs on motor vehicle enforcement property.

(a) A commissioned employee shall not store or bring into any post, vehicle, or other facility of the Transportation Cabinet any alcoholic beverage or controlled substances except those which are being held as evidence or have been seized as contraband.

(b) Possessing alcoholic beverages or controlled substances on Transportation Cabinet property is a Class C violation.

(18) Gambling.

(a) A commissioned employee shall not participate in any form of gambling while on duty or while in any Division of Motor Vehicle Enforcement post, vehicle, or other Transportation Cabinet facility.

(b) A commissioned employee shall not participate in any form of illegal gambling at any time except in the performance of duty and while acting under direct and specific orders from a superior officer.

(c) Gambling on duty or on Transportation Cabinet property is a Class C violation.

(19) Personal appearance.

(a) Commissioned employees shall maintain a neat and clean appearance at all times when in public or when engaged in the performance of duty.

(b) A commissioned employee shall not use tobacco in any form when performing any official duty in direct or immediate contact with the public.

(c) Failure to maintain a proper personal appearance is a Class C violation.

(20) Gratuities or rewards.

(a) A commissioned employee shall not solicit or accept any gratuity or reward for any activity performed in his official capacity.

(b) Solicitation or acceptance of a gratuity or reward is a Class C violation.

(21) Abuse of position.

(a) A commissioned employee shall not use his official position, official identification card, or badge for the following:

1. Personal or financial gain;

2. Obtaining privileges not otherwise available to him except in the performance of duty; or

3. Avoiding consequences of illegal acts.

(b) A commissioned employee shall not lend to another person his identification card or badge or permit them to be photographed or copied.

(c) A commissioned employee shall not authorize the use of his name, photograph, or official title in connection with testimonials or advertisements of any commodity or commercial enterprise without the approval of the commissioner.

(d) Abuse of position is a Class C violation.

(22) Endorsements and referrals.

(a) A commissioned employee shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service.

(b) In the case of ambulance or towing service, when this service is necessary and the person needing the service is unable or unwilling to procure it or requests assistance, commissioned employees shall proceed in accordance with procedures established in the guidance manual or by policy memorandum.

(c) Making an endorsement or referral is a Class C violation.

(23) Discourtesy.

(a) Commissioned employees shall be courteous to the public and other commissioned employees.

(b) Commissioned employees shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.

(c) In the performance of their duties, commissioned employees shall not use coarse, violent, profane, or insolent language or gesture, and shall not express any prejudice concerning race, religion, politics, national origin, disability, lifestyle or similar personal characteristics.

(d) When performing any official duty in direct and immediate contact with members of the public or other commissioned employees, commissioned employees shall address superior officers by rank.

(e) Discourtesy is a Class C violation.

(24) Identification.

(a) Commissioned employees shall furnish their name and unit number to any person requesting that information when they are on duty or while holding themselves out as having an official capacity, except when the withholding of such information is necessary for the performance of police duties or is authorized by their supervisor.

(b) Failure to provide proper identification is a Class C violation.

(25) Associations.

(a) Commissioned employees shall avoid associations or dealings with persons whom they know, or should know, are racketeers, gamblers, felons, persons under criminal investigation or indictment, or others who have a reputation in the community for felonious or criminal behavior, except as directed otherwise by a superior officer.

(b) Commissioned employees shall not visit or enter a house of prostitution, gambling house, or any other establishment wherein the laws of the United States, the laws of the Commonwealth of Kentucky, or any other law or ordinance are violated except in the performance of duty and while acting in response to lawful and specific orders of a superior officer.

(c) Prohibited associations is a Class C violation.

(26) Requests for assistance.

(a) When any person applies for assistance or advice or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established procedures.

(b) Failure to properly respond to a request for assistance is a Class C violation.

(27) Public statements and appearances.

(a) A commissioned employee shall not publicly criticize or ridicule the Division of Motor Vehicle Enforcement, its policies, or other commissioned employees by speech, writing, or other expression where the speech, writing, or other expression is defamatory, obscene, unlawful, undermines the effectiveness of the Division of Motor Vehicle Enforcement, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falsity.

(b) A commissioned employee shall not address public gatherings, appear on radio or television, prepare any articles for publication, act as correspondents to a newspaper or periodical, release or divulge investigative information or any other matters of the Division of Motor Vehicle Enforcement while holding himself out as representing the Division of Motor Vehicle Enforcement in these matters without proper authority.

(c) Improper public statements or appearances is a Class C violation.

(28) Payment of debts.

(a) Commissioned employees shall not undertake any financial obligations which they know or should know they will be unable to meet and shall pay all just debts when due.

(b) An isolated instance of financial irresponsibility shall not be grounds for discipline.

(c) Repeated instances of financial irresponsibility may be cause for disciplinary action.

(d) Filing for bankruptcy shall not be cause for discipline.

(e) Financial difficulties stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline, provided that a good faith effort to settle all accounts is being undertaken.

(f) Failure to pay a just indebtedness is a Class C violation.

(29) Dissemination of information.

(a) Commissioned employees shall treat the official business of the Division of Motor Vehicle Enforcement as confidential.

(b) Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with procedures established in the guidance manual or by policy memorandum.

(c) Commissioned employees may remove or copy official records or reports only in accordance with established procedures.

(d) Commissioned employees shall not divulge the identity of

persons giving confidential information except as authorized by proper authority.

(e) Dissemination of confidential information is a Class C violation.

(30) Reports.

(a) Commissioned employees shall submit all necessary reports on time and in accordance with established procedures.

(b) Reports submitted by commissioned employees shall be accurate and complete.

(c) Submission of inaccurate or late reports is a Class C violation.

(31) Improper handling of property and evidence.

(a) Property or evidence which has been discovered, gathered, or received in connection with Division of Motor Vehicle Enforcement responsibilities shall be processed in accordance with established procedures.

(b) A commissioned employee shall not convert to his own use, manufacture, conceal, falsify, remove, tamper with, or withhold any property or evidence in connection with any investigation or other police action.

(c) Improper handling of property and evidence is a Class C violation.

(32) Improper use and care of equipment.

(a) Commissioned employees shall utilize issued equipment only for its intended purpose, in accordance with established procedures and training instructions, and shall not abuse, damage, lose, or use for personal purposes any issued equipment.

(b) All issued equipment shall be maintained in proper order.

(c) Any commissioned employee who violates this standard of conduct may be required to reimburse the department for the replacement or repair cost of the damaged or lost equipment.

(d) Abuse or loss of equipment is a Class C violation.

(33) Improper operation of official vehicles.

(a) Commissioned employees shall operate official vehicles in a careful and prudent manner, and shall obey all laws of the Commonwealth and administrative regulations of the Commonwealth pertaining to the operation of motor vehicles.

(b) Loss or suspension of any driving privilege or license shall be reported immediately.

(c) Careless or improper operation of an official vehicle is a Class C violation.

(34) Use of weapons.

(a) A commissioned employee shall not use or handle weapons in a careless or imprudent manner.

(b) Careless or improper use of a weapon is a Class C violation.

(35) Unauthorized appearance in a civil case.

(a) Without the prior approval of his supervisor, a commissioned employee shall not testify or give sworn statements in any civil case in which the Division of Motor Vehicle Enforcement may have an interest or in which the commissioned employee has acted in his official capacity.

(b) If the commissioned employee has been lawfully served with process, he shall notify his supervisor.

(c) Unauthorized appearance in a civil case is a Class C violation.

(36) Reporting violations of standards of conduct.

(a) A commissioned employee shall not fail to report to his supervisor the violation of any standard of conduct which he observes or of which he has knowledge concerning other members of the Division of Motor Vehicle Enforcement.

(b) Failure to report a violation of the standards of conduct is a Class C violation.

(37) Leaving assignment.

(a) A commissioned employee shall not leave his patrol area or work assignment without proper authority except in cases of emergency.

(b) Unauthorized absence from patrol area of work assignment is a Class C violation.

(38) Response to radio dispatches and use of radio.

(a) Commissioned employees shall promptly acknowledge receipt of all dispatches directed to them and, upon receipt of any call for service, shall immediately proceed to the place designated where they shall perform their required duties.

(b) After completing their assignments, they shall immediately call their posts and report their availability for further service.

(c) Commissioned employees shall keep their radios in service at all times and shall not render themselves unavailable for radio calls except in emergencies or when authorized to check out of service by a supervisor.

(d) All messages transmitted by radio and all radio conversations shall conform to the rules and regulations of the Federal Communications Commission.

(e) Profanity and superfluous remarks shall be prohibited.

(f) Improper response to radio dispatches or improper use of the radio is a Class C violation.

(39) Reporting vital information.

(a) A commissioned employee shall not fail to report to his supervisor any information which he becomes aware of which may result in the apprehension of fugitives or the arrest or felons.

(b) In addition, failure of any commissioned employee to promptly relay information of official interest or pertaining to the duties of another commissioned employee shall constitute a violation of this section.

(c) Failure to report vital information is a Class C violation.

(40) Bail or bond for persons arrested.

(a) A commissioned employee shall not furnish bail or bond for any person, except members of the commissioned employee's immediate family, who has been arrested.

(b) Providing bail or bond for an arrested person is a Class C violation.

(41) Dereliction of duty.

(a) Commissioned employees shall perform their duties in a responsible and attentive manner.

(b) Dereliction of duty may be demonstrated by:

1. A lack of knowledge of the application of the laws to be enforced;

2. Unwillingness or inability to perform assigned tasks;

3. Failure to conform to work standards established for the commissioned employee's rank, grade, or position;

4. Failure to take appropriate action when confronted with a violation within the commissioned employee's scope of authority;

5. Exercise of poor judgment with regard to conformance to the primary mission of the division;

6. Absence without leave; or

7. Repeated poor evaluations or a written record of repeated infractions of any administrative regulations, policies, or procedures of the Division of Motor Vehicle Enforcement.

(c) Commissioned employees, while on duty, shall at all times remain alert and in a sufficient state of readiness to quickly respond to any appropriate situation requiring action.

(d) Commissioned employees, while on duty, shall not sleep, conduct personal business, attend to personal pleasures, or engage in any other activities which would cause them to neglect or be inattentive to duty.

(e) Dereliction of duty is a Class C violation.

(f) Dereliction of duty is a Class A violation when the act or omission which forms the basis for the charge is intentionally done for personal gain or for the gain of any person, group, company, or organization, and is detrimental to the operational efficiency of the Division of Motor Vehicle Enforcement.

(42) Exceeding lawful authority.

(a) Commissioned employees shall at all times perform their duties within the parameters of the law enforcement authority conferred upon them by the department.

(b) Exceeding lawful authority may be demonstrated by the following noninclusive list:

1. Admonishing or lecturing citizens;

2. Making a physical arrest, or other enforcement activity which is directed at persons outside the scope of the authority of the Division of Motor Vehicle Enforcement, as defined by the commissioner.

(c) Exceeding lawful authority is a Class C violation.

(43) Reporting criminal investigations.

(a) Whenever any commissioned employee conducts any criminal investigation he shall report in writing, pursuant to established procedure, his activities with respect to the investigation.

(b) Failure to report a criminal investigation is a Class C violation.

(44) Conduct unbecoming.

(a) Commissioned employees shall conduct themselves at all times, both on and off duty, in a manner to reflect favorably on the Division of Motor Vehicle Enforcement.

(b) Conduct unbecoming an commissioned employee shall include any conduct that brings the Division of Motor Vehicle Enforcement into disrepute or reflects discredit upon the commissioned employee as a member of the Division of Motor Vehicle Enforcement, or impairs the operation or efficiency of the Division of Motor Vehicle Enforcement or the commissioned employee.

(c) Conduct unbecoming shall also include sexual harassment, which is any attempt by a commissioned employee to obtain sexual favors by means of coercion, intimidation, or any other means, or making unwelcome sexual advances, comments, or gestures, or other actions which can be construed as contributing to a sexually harassing or offensive environment.

(d) Conduct unbecoming is a Class C violation, with the exception of sexual harassment, which is a Class A violation.

Section 14. Motor Vehicle Enforcement Guidance Manual. (1) The "Motor Vehicle Enforcement Guidance Manual" approved May 3, 1994 is incorporated by reference as a part of this administrative regulation.

(2) The guidance manual sets forth the policies and procedures to be followed by the Division of Motor Vehicle Enforcement employees.

(3) The guidance manual may be viewed or copied at the Division of Motor Vehicle Enforcement. It may be obtained from the Division of Management Services for a fee of twelve (12) dollars. Both offices are located at 501 High Street, Frankfort, Kentucky 40622. Their office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

NORRIS BECKLEY, Commissioner
DON C. KELLY, P.E., Secretary

APPROVED BY AGENCY: July 1, 1994

FILED WITH LRC: July 13, 1994 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 24, 1994 at 2 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, Room 1003, 10th Floor, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 19, 1994 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 August 19, 1994. 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 August 24, 1994. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Staff Assistant, Transportation Cabinet, 1003 State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: The 200 sworn personnel, officers, trainees, and inspectors in the Division of Vehicle Enforcement.

(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: Increased administrative costs as a result of establishing an Internal Affairs group, investigating internal and external complaints, and holding trial boards. However, the personnel performing these functions are already employed in the Division of Motor Vehicle Enforcement. The time needed to deal with these complaints will take them away from their normally assigned duties.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Directly related to the number of complaints received.

(b) Reporting or paperwork requirements: Reports will be generated as a result of the complaints received.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Slight differences in the level of punishment assessment were discussed as were the standards of conduct to which the sworn personnel are going to be required to adhere. The current administrative regulation provisions were decided upon after extensive discussions with the Kentucky State Police about what has worked and not worked in their personnel proceedings for the last several years. Overall, the procedures are based on those used by the Kentucky State Police.

(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 disciplinary actions relating to the standards of conduct for the sworn personnel are tiered based on the seriousness of the misdeed.

EDUCATION AND HUMANITIES CABINET
Department of Education
Bureau of Learning Results Services

704 KAR 3:455. Instructional material and textbook adoption process.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190, 160.345

STATUTORY AUTHORITY: KRS 156.410, 156.433, 156.437, 156.439, 156.474, 156.476, 157.110, 157.130, 157.140, 157.150, 157.160

NECESSITY AND FUNCTION: KRS 156.400 to 156.476 set up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth; KRS 157.100 to 157.190 require that the Department of Education set up

management procedures for the textbook program. KRS 156.433 and 156.439 require that administrative regulations be written to: define instructional materials; identify instructional materials eligible for purchase with state textbook funds; identify instructional materials which are subject to review before being approved for use; establish a procedure for the review of instructional material and a process for adding an instructional material to the approved list; establish a method for calculating and distributing a school district's textbook and instructional material allocation; and design a planning instrument for each school to use in documenting its textbook and instructional material needs during each adoption period. This administrative regulation establishes the standards and procedures which are necessary to carry out the statutory requirements dealing with textbooks and instructional materials.

Section 1. Definition. "Instructional material" means any print, nonprint or electronic medium of instruction designed to assist students.

Section 2. The subjects included in the "Program of Studies for Kentucky Schools", 704 KAR 3:303, shall be arranged into six (6) groups as follows: Group I--Social Studies P-12; Group II--Language Arts P-12; Group III--Science P-12; Group IV--Music P-12 and Vocational Education 1-12; Group V--Mathematics P-12 and Computer Education 6-12; Group VI--Reading P-12, Literature, Art, Foreign Language, Health P-12, and Driver Education 10-12.

Section 3. (1) Vendors submitting bids shall ship adequate textbook and instructional material samples to the Department of Education, individual State Textbook Commission members, and to the state review site before the beginning of the review process. All other pertinent bid information shall be provided by the bid opening.

(2) When the review process has been completed and the individual commission members have no further need for samples in their possession, the samples shall be disposed of in the following manner:

(a) Reclaimed by publishers; or

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies.

Section 4. (1) Each adoption year before establishing the state list, the State Textbook Commission shall conduct a hearing for the following purposes:

(a) Interviewing publisher agents, representatives and vendors of textbooks and instructional materials; and

(b) Hearing any person or organization that may have complaints or concerns about a textbook or instructional material being considered for listing.

(2) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a written request two (2) weeks prior to the hearing. The request shall clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author, International Standard Book Number, and copyright date of the textbook or instructional material in question;

(c) Sections of the textbook or instructional material being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook or instructional material is adopted; and

(e) Suggested alternatives.

(3) One (1) spokesperson shall represent a group or organization.

(4) The commission's position and action shall be forwarded to the concerned parties after the state list has been established.

Section 5. (1) The Kentucky State Textbook Commission may inquire into and ascertain if any vendor has violated this administrative regulation or the Kentucky Revised Statutes, or if the vendor has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include actions such as unsolicited contact by vendors or their representatives with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members, local district personnel and review committee members meals, gifts, trips, or entertainment to assure the listing, adoption, and purchase of their textbooks or instructional materials. If there is sufficient evidence that a vendor is guilty, the vendor shall be called before the State Textbook Commission to determine if violations did occur and what course of action shall be taken.

(2) Vendors proposing to give local districts free-of-charge items such as blackline masters, teachers editions, workbooks, and extra textbooks, if the districts adopt and purchase their items, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, vendors may sample gratis items to local districts or schools for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a vendor's textbooks or instructional materials.

(4) The State Textbook Commission may refuse to execute or may cancel a vendor contract upon discovery that the vendor has violated any part of this administrative regulation or does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook or instructional material contracts shall file with the Department of Education the name and address of a Kentucky person, firm, or corporation upon whom process may be served.

Section 6. Vendors and local school districts or school councils may agree to pilot new textbook and instructional material programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook or instructional material program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The chief state school officer shall approve all piloting programs. The local school district superintendent shall file the request for approval with the chief state school officer. The request shall clearly state:

(1) The vendor that will conduct the pilot;

(2) The purpose of the pilot;

(3) The subject and grade levels in which the pilot shall be conducted;

(4) The schools where the pilot shall be conducted;

(5) The name of the school district staff member supervising the pilot;

(6) Beginning and ending date of pilot; and

(7) Brief summary of evaluation procedures.

Section 7. Any school administrator, school council chair, or teacher shall not receive directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks and instructional materials.

Section 8. (1) Each textbook submitted for adoption in Kentucky shall meet the "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturer's Institute, as revised August 1, 1988. This edition is incorporated by reference and is on file in and can be inspected, copied, and obtained from the Division of Curriculum Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday-Friday, 8 a.m. - 4:30 p.m.

(2) Publishers may submit an old copyright with the official bid; however, a revised edition shall be submitted before the commission hearing. Publishers may submit a galley proof, incomplete book, or

statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 9. Inaccurate information, defective binding, workmanship or material shall be reported by school personnel to the vendor as soon as detected. Vendors shall be held responsible for all inaccurate or defective textbooks and instructional materials. Textbooks and instructional materials that show manufacturing defects in the first or second year of use shall be replaced by the vendor on a one-for-one basis. After the first two (2) years of use, a replacement agreement shall be negotiated between the local district and the vendors. School districts shall start the replacement process as soon as it has been determined that textbooks or instructional materials are inaccurate or defective.

Section 10. (1) Request to substitute revised editions of textbooks or instructional materials under contract shall be considered at the first regular meeting of the calendar year of the State Textbook Commission to be held on or before May 1.

(2) Substitutions shall not be permitted for textbooks or instructional material to be used the last year of a contract.

(3) The vendor shall agree to supply either the listed or the substituted item in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the textbook or instructional material was bid and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Thirty (30) days prior to date of the commission meeting publishers shall provide a sample of the substituted textbook or instructional material and a list of the changes with page numbers of the revised edition or other reference data that compares it with the textbook or program presently listed.

Section 11. The retail price for textbooks or instructional materials to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

Section 12. (1) The State Textbook Commission shall direct the process for including instructional materials used in lieu of basal programs on the state list. The commission shall receive assistance in the review and selection of instructional materials from professional educators and lay citizens who may serve on a contractual basis.

(2) The Commissioner of Education shall recommend to the State Textbook Commission names of instructional material reviewers with knowledge about the area or areas being considered for adoption.

(3) The State Textbook Commission shall:

(a) Appoint, from a list of qualified applicants prepared by the Commissioner of Education, twelve (12) instructional material reviewers;

(b) Approve the evaluative criteria and instruments of evaluation developed by the instructional material reviewers; and

(c) Select, approve, and publish a list of high quality instructional materials using the information submitted by the reviewers.

(4) The instructional material reviewers shall:

(a) Be comprised of twelve (12) individuals. Four (4) shall be classroom teachers with expertise in the content area considered for adoption and shall be actively employed in a public school; two (2) shall be other educators; two (2) shall have expertise and experience working with instructional technology; one (1) shall be a library/instructional media specialist; one (1) shall have expertise in alternative ways of learning; and, two (2) shall be parents with children currently enrolled in the public schools;

(b) Represent gender, grade level, geographic, and ethnic diversity;

(c) Attend meetings and training sessions as requested by the Department of Education;

(d) Develop and submit to the State Textbook Commission an instrument of evaluation to be used in reviewing instructional materials;

(e) Review instructional material except those that are ancillary to basal textbook programs to determine those of high quality using the instrument of evaluation approved by the State Textbook Commission; and

(f) Submit to the State Textbook Commission their recommendations for instructional material to be placed on the state's approved list and shall submit the instruments used in the evaluation process.

(5) Electronic instructional materials shall be reviewed and approved by the Kentucky Education Technology System and shall not be subject to approval by the State Textbook Commission.

Section 13. (1) Schools may use state textbook funds for the purchase of adopted textbooks, instructional materials, or programs in any combination based on identified pupil needs. Purchases may include the following:

(a) Textbooks on the commission's approved list;

(b) Instructional materials on the commission's approved list;

(c) Electronic instructional materials on the Kentucky Education Technology System approved list; and

(d) Items not on the above named approved lists but that meet selection criteria.

(2) Instructional material not subject to state review but eligible for purchase shall include the following:

(a) Reference books, trade books, pamphlets, periodicals, and other supplemental print material for student use;

(b) Supplementary video tapes, cassette tapes, slides, and recordings;

(c) Graphic materials, transparencies, globes, maps, music material, math and science manipulatives, calculators, and similar material; and

(d) Supplementary electronic instructional materials.

(3) The following materials and services shall not be eligible to be purchased with state textbook funds:

(a) Furniture, personnel services, testing programs, supplies and materials consumed in initial use such as workbooks, raw and blank materials.

(b) Audio visual equipment, major audio-visual installations such as public address systems, sound laboratories for language, computers, televisions (including receiving sets and related equipment) and other equipment; and

(c) Teacher resources including teachers' guides, manuals, and backline master books.

Section 14. (1) Every school in the Commonwealth with grades primary through eight (8) shall complete an annual plan identifying purchases to be made with textbook funds according to the adoption cycle including necessary replacements. These plans may be revised.

(2) Each school's plan shall be kept on file in the district's central office, and the superintendent shall certify by a letter to the Kentucky Department of Education that all approved plans have been received and meet Kentucky Department of Education standards.

Section 15. (1) Pupils in grades primary through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction; and

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made by local school districts to the Department of Education.

(3) Request for large print textbooks and material shall be directed to the Kentucky School for the Blind.

(4) The local board of education shall assume responsibility for the care of large print textbooks and return them to the Kentucky School for the Blind when no longer needed.

(5) Large print textbooks and materials provided by the Kentucky School for the Blind shall not be charged to the textbook account of the local school.

Section 16. (1) The Department of Education shall prepare textbook and instructional material budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing basal textbook and instructional material programs during each adoption or funding cycle. The funds shall be used for students in primary through grade eight (8), exclusively.

(2) When allocating funds for the purchase of textbooks and instructional materials, the Department of Education shall use the pupil membership at the close of the first month of the current school year.

(3) After receiving a statement of funds allocated, the superintendent shall notify within thirty (30) days the school council, or if none exists, the principal, of the per-pupil allotment to be expended by each school.

(4) Money appropriated in the current fiscal year shall be spent on textbooks and instructional materials in that year's adoption cycle. Money carried over to the next fiscal year may be spent by each school on textbooks and instructional materials in accordance with its plan.

(5) After July 1, checks shall be issued to districts having on file in the Kentucky Department of Education a statement from the superintendent certifying the receipt of all approved plans.

(6) Local school districts shall establish and maintain accounts that reflect the receipt and expenditures of state textbook and instructional material funds. These accounts shall be subject to audit.

Section 17. (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12). This shall not prohibit local districts from using local funds to provide a free textbook program.

(2) Local school districts not providing a free textbook program for grades nine (9) through twelve (12) shall establish annually a textbook rental fee. The maximum rental fee shall be based on six (6) dollars per two (2) semester course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed three (3) dollars per two (2) semester course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) Local school districts shall establish and maintain accounts for the textbook rental program subject to audit. The school council, or if none exists, the principal, shall be notified regarding the school's balance.

Section 18. (1) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label shall be affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." The purchase date and the issue date shall be recorded on the uniform label.

(2) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed shall be classified as a used textbook.

(3) A complete record shall be kept by the school for all state-provided textbooks and instructional materials for grades primary through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12).

Section 19. Pupils or parents shall compensate schools for textbooks and instructional materials lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks and instructional materials; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks and instructional materials; and twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks and instructional materials. Funds collected shall be credited to the school's textbook account.

Section 20. (1) The local superintendent shall assume responsibility for the disposal of textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities;

(b) Make the textbooks available to pupils within the school district;

(c) Publicize in the local newspaper that textbooks are available to individual residents of the local district. Textbooks disposed of in this manner shall not be made available to used textbook dealers;

(d) Make the textbooks available to civic organizations or others for the purpose of distribution to underdeveloped countries or disadvantaged students;

(e) Make the textbooks available to recycling operations;

(f) Sell textbooks to used textbook dealers; or

(g) Destroy textbooks in any manner that is practical and in the best interest of the state and local school district.

(2) Any funds from the sale of the textbooks shall be credited to the school's textbook account.

Section 21. (1) No child shall be denied full participation in any educational program due to an inability to purchase any necessary textbooks. Local school districts shall make available free textbooks to all children in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks, using the eligibility guidelines for the free and reduced price lunch program. The parents of these children may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that they contribute financially toward the cost of their children's lunches.

(2) Local school districts shall adopt policies and procedures so that, at the beginning of the school year, pupils or their parents are given written notice of how to obtain free and reduced rental textbooks. The policies and procedures shall also insure that any written communication regarding payment of fees for textbooks shall include a form that parents can use to request waiver or partial waiver of textbook fees.

(3) Local districts shall keep records that include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9) through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental textbooks and the number of pupils receiving free or reduced rental textbooks; and

(c) Copies of any forms, notices or instructions used by schools in the collection of textbook fees or the provision of free or reduced rental textbooks.

(4) In the provision of textbooks to indigent children, no child shall be discriminated against because of race, sex, color, national origin, age, or disability and there shall be no overt identification of any

indigent children.

Section 22. (1) Every public school student shall have access to necessary textbook(s) or instructional material(s) which shall be furnished free of charge in grades primary through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have the textbook(s) available for the reasonable rental fee set forth in Section 17 of this administrative regulation for each subject studied in grades nine (9) through twelve (12).

(2) Quantities of textbooks and instructional materials needed for each student and each classroom shall be determined at the school level.

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 156.410.

Thomas C. Boysen
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 26, 1994 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 August 21, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: Kevin M. Noland, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact person: Kevin M. Noland

(1) Type and number of entities affected: Kentucky Department of Education, 176 school districts, and vendors of textbooks and instructional materials.

(a) Direct and indirect costs or savings to those affected: None

1. First year: 0

2. Continuing costs or savings: 0

3. Additional factors increasing or decreasing costs (note any effects upon competition): 0

(b) Reporting and paperwork requirements: Less than previously required.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year: 0

2. Continuing costs or savings: 0

3. Additional factors increasing or decreasing costs: 0

(b) Reporting and paperwork requirements: Less than previously required.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: A group of school district personnel met and discussed the process involved and looked at alternatives; and agreed that the process as outlined in the regulation would be the most effective for Kentucky schools.

(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: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: This regulation streamlines and clarifies the process for purchasing textbooks and instructional materials in the schools.

TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all individuals regulated by it and all 176 school districts.

LABOR CABINET
Department of Workplace Standards
Division of Employment Standards and Mediation

803 KAR 1:110. Prevailing wage overtime agreements.

RELATES TO: KRS 337.530, 337.540

STATUTORY AUTHORITY: KRS 337.295, 337.520(1)

NECESSITY AND FUNCTION: The Commissioner of Workplace Standards is authorized by KRS 337.520(1) to promulgate regulations necessary to carry out the provisions and purposes of the prevailing wage statutes and to prevent the circumvention or evasion of those laws. This administrative regulation sets forth the procedure to be followed when written agreements are executed between employees and employers for the purposes of KRS 337.540 and shall apply to all work performed on public works projects after July 15, 1994.

Section 1. (1) KRS 337.540(1) requires that in order for an employer to permit any laborer, workman, or mechanic working on a public works project to work in excess of eight (8) hours, but not more than ten (10) hours except as provided in KRS 337.540, in a calendar day the employer and employee shall enter into an agreement.

(2) The agreement, including any collective bargaining agreement, shall be in writing and shall be executed prior to the employee working in excess of eight (8) hours, but not more than ten (10) hours, in any one (1) calendar day.

(3) In the absence of a prior written agreement, the employer shall pay the public works employee not less than one and one-half (1 1/2) times the basic hourly rate of pay as determined by KRS 337.520 for every hour in excess of eight (8) hours worked in any one (1) calendar day.

(4) Even with the written agreement, all work performed in excess of ten (10) hours per day or forty (40) hours per week shall be paid at the rate of one and one-half (1 1/2) times the basic hourly rate, as required by KRS 337.285 and 337.540.

Section 2. (1) The written agreement described in Section 1 of this administrative regulation shall be submitted to the public authority or its designated representative prior to any laborer, workman, or mechanic being allowed to work more than eight (8) hours a calendar day in return for the straight time rate. No specific form shall be submitted unless required by the individual public authority.

(2) The written agreement shall be signed by the laborer, workman, or mechanic and the employer. In the case of a collective bargaining agreement, the language shall state specifically the employees to be covered and shall be signed by the bargaining agent and all affected employers. A separate agreement shall be required for each project.

Section 3. A public authority shall affix the date the written agreement or collective bargaining agreement is received and shall retain the agreement for a period of five (5) years from the date the public works project is complete. The agreement shall be considered in effect for the project as of the date received by the public authority. In the case of a collective bargaining agreement, the employer or the bargaining agent shall present the collective bargaining agreement to the public authority and the date received shall be affixed by the public authority.

CAROL M. PALMORE, Secretary

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994, at 1 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Bill Riggs, Director, Division of Employment Standards and Mediation, 1047 U.S. 127 South, Suite 3, Frankfort, Kentucky 40601, (502) 564-2784.

REGULATORY IMPACT ANALYSIS

Agency Contact: Rex Hunt, Bill Riggs

(1) Type and number of entities affected: This new regulation affects all employers in the construction industry performing public works construction as regulated under KRS 337.505 to 337.550.

(a) Direct and indirect costs or savings to those affected: Affected employers could realize a costs savings during weeks when employees work more than 8 hours per day on public works construction projects. Prior to July 15, 1994, KRS 337.540 requires payment of not less than time and one half the basic hourly prevailing wage rate to any laborer, workman, or mechanic who works in excess of 8 hours per day. The statutory change, effective July 15, 1994, will allow employees to work in excess of 8, but not more than 10, hours a day before they must receive overtime pay if employers and employees agree in writing. This will not affect the requirement for overtime if an employee works more than 40 hours a week. This will result in a savings in travel expenses for employees and employers when they are working on prevailing wage projects outside their home areas, since it will encourage contractors to schedule 4, 10-hour days per week, instead of the traditional 5, 8-hour days per week.

1. First year: Minimal savings.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this proposed regulation which will increase or decrease costs. Employers from outside the locality of the project will be able to reduce travel costs.

(b) Reporting and paperwork requirements: Employers on prevailing wage contracts will be required to file written agreements with the Division of Employment Standards and Mediation prior to working individuals over 8 hours per day if the employers wish to avoid paying overtime for hours worked between 8 and 10 hours in any 1 day.

(2) Effects on the promulgating administrative body: The promulgating body will be affected minimally, perhaps an additional employee will need to be hired to process the added paperwork requirements.

(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: Written agreements will be reviewed by the Division of Employment Standards and Mediation.

(3) Assessment of anticipated effect on state and local revenues: Minimal

(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

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate under the circumstances. This regulation applies only to those employers who receive contracts to work on prevailing wage projects.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment will affect any covered public works project advertised for any state, city, or county political subdivision.

3. State the aspect or service of local government to which this administrative regulation relates. KRS 337.505-.550 sets forth the requirements for prevailing wages on public works projects over the minimum amount. KRS 337.540 authorizes the action taken by this proposed administrative regulation. There is no federal requirement for this action. This administrative regulation sets forth the procedure whereby employers and employees may enter into written agreements on prevailing wage projects to work more than 8 hours a day, but not more than 10 hours a day, in return for straight time pay.

4. How does this administrative regulation affect the local government or any service it provides? This proposed administrative regulation sets forth the procedure required to allow such written agreements, which are provided for by statute. These agreements would allow contractors working on public works projects more flexibility in completing projects. In addition, this could have the potential of reducing the costs of prevailing wage projects. This administrative regulation would not increase or decrease state or local government revenues. However, state or local government expenditures could decrease if contractors reduce their bids, since the statute provides for working more than 8 hours a day without the overtime pay requirement. This administrative regulation should not have a discernable effect on the number of employees or other cost factors of state or local governments. The only possibility for hiring additional personnel would be for public authorities dealing with extremely large prevailing wage projects.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health

803 KAR 2:034. Repeal of 803 KAR 2:033.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules,

regulations, and standards. It is necessary to repeal Kentucky's state-specific field sanitation standard, 803 KAR 2:033, since the Standards Board subsequently adopted the federal field sanitation standard, 29 CFR 1928.110, which is incorporated by reference in 803 KAR 2:600.

Section 1. 803 KAR 2:033, Field sanitation standard, is hereby repealed.

MRS. CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: July 13, 1994

FILED WITH LRC: July 14, 1994 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1994, at 10 a.m., E.T., at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1994, 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 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: Erin J. Foley, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-2778.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, Erin J. Foley

(1) Type and number of entities affected: The deletion of 803 KAR 2:033 affects all agricultural employers covered by this agency.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected by this deletion; it is simply a housekeeping measure. In undertaking an extensive review of Kentucky's occupational safety and health regulations, it was discovered that the Kentucky state-specific "Field sanitation standard," 803 KAR 2:033, was not deleted when the federal "Field Sanitation" standard was adopted by the Standards Board and incorporated by reference in 803 KAR 2:600.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding this deletion which will increase or decrease costs. There will be no effect on competition.

(b) Reporting and paperwork requirements: This deletion will not entail any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this deletion.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this deletion.

(3) Assessment of anticipated effect on state and local revenues: This deletion will have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered as this deletion simply corrects an oversight.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of this amendment.

(a) Necessity of proposed regulation if in conflict:

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

TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with 1 or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KyOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of five or more employees) has occurred.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This deletion affects all local government entities that are under the jurisdiction of this agency that are involved in agricultural work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed deletion affects safety and health of agricultural employees of local government.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of this deletion is to correct an oversight that occurred when the federal "Field Sanitation" standard was adopted in Kentucky. There will be no increase or decrease in local government revenues or expenditures. This amendment will not affect the number of local government employees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. This deletion clarified the adoption of a federal regulation.

3. Minimum or uniform standards contained in the federal mandate. The federal standards, 29 CFR 1928.110, "Field Sanitation," as published in the Federal Register, Volume 52, Number 84, May 1, 1987, was adopted by the Standards Board and incorporated by reference in 803 KAR 2:600.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed deletion would clarify that our regulation is identical to the federal regulation.

5. Justification for the imposition of the stricter standard or additional or different responsibilities or requirements. This deletion imposes no stricter, additional or different responsibilities than federal standards.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:094. Repeal of 803 KAR 25:095.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 13A.310(1)

NECESSITY AND FUNCTION: House Bill 250, which was passed by the 1994 regular session of the Kentucky General Assembly, creates a new section of KRS Chapter 216 which provides that standardized uniform health claim forms shall be prescribed by the Health Policy Board "which shall be used when processing any health

insurance claim and workers' compensation health claim made in this state." Any person who knowingly fails to use or accept the standardized uniform health claim form is subject to forfeiture of its license to do business in the Commonwealth and a civil fine not to exceed $1,000 for each violation. 803 KAR 25:095 required the use of a medical provider's certification in addition to a standardized claim form. House Bill 250 prohibits the use of any attachments or certifications which exceed that contained on the uniform health insurance claims forms prescribed by the Health Policy Board. In addition, 803 KAR 25:095 contained a prohibition against balance billing. House Bill 928 of the 1994 regular session of the General Assembly amended KRS 342.035 to add an express prohibition against balance billing, and in addition a penalty may now be imposed under KRS 342.990 for violations of the balance billing prohibition. Since the statute now discusses balance billing in a comprehensive manner, the administrative regulation concerning it is no longer necessary and contravenes KRS 13A.120(1)(f).

Section 1. 803 KAR 25:095, Statements for medical services, is hereby repealed.

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: July 14, 1994
FILED WITH LRC: July 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on August 23, 1994. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1994, 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 and prior arrangements for a transcript are made five days prior to the hearing. 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Valerie Salven
(1) Type and number of entities affected: None, since a new section of KRS Chapter 216 prevents the use of the workers' compensation medical provider's certification, and amendment to KRS 342.035 makes the balance billing provisions redundant.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(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 method; reasons why alternatives were rejected: None; administrative regulation is being repealed as a result of statutory changes.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: Purpose of repeal is to avoid conflict as a result of statutory changes.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Is tiering applied? No. The purpose of this administrative regulation is to repeal another regulation to avoid a conflict with statutory changes.

LABOR CABINET
Department of Workers' Claims

803 KAR 25:101. Provision of Workers' Compensation rehabilitation services.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS Chapter 13A, 342.260, 342.710
NECESSITY AND FUNCTION: KRS 342.260 requires the Department of Workers' Claims to promulgate such administrative regulations as it considers necessary to carry out its work and the work of the administrative law judges in accordance with the provisions of KRS Chapter 342 and KRS Chapter 13A. The function of this proposed regulation is to regulate the provision of rehabilitation services pursuant to KRS 342.260 and 342.710.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).
(2) "Association of Rehabilitation Nurses" means the national organization which certifies nurses as certified rehabilitation registered nurses.
(3) "Board for Rehabilitation Certification (BRC)" means the national organization which certifies rehabilitation counselors and nurses as certified insurance rehabilitation specialists certified rehabilitation counselors and certified case managers.
(4) "Commission on Accreditation of Rehabilitation Facilities (CARF)" means the national organization which accredits rehabilitation facilities.
(5) "Directory of Qualified Rehabilitation Facilities" means the directory of facilities in Kentucky which are licensed pursuant to KRS Chapter 216B and which are accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation whose application for accreditation is pending. These facilities are resources to which administrative law judges or Department of Workers' Claims rehabilitation counselors may refer injured employees for comprehensive medical evaluations when the administrative law judge has ordered the provision of rehabilitation services pursuant to KRS 342.710.
(6) "Directory of Vocational Evaluation Facilities" means the directory of facilities in Kentucky which are accredited by CARF in the area of vocational evaluation. These facilities are resources to which administrative law judges or Department of Workers' Claims rehabilitation counselors may refer injured employees for vocational evaluations when the administrative law judge has ordered the provision of rehabilitation services pursuant to KRS 342.710.
(7) "Medical rehabilitation services" means those medically oriented services beyond basic medical surgical and hospital treatment which are necessary for the accomplishment of feasible practical and justifiable physical rehabilitation goals. Such services shall continue for whatever period of time is necessary to accomplish such goals.
(8) "Qualified rehabilitation coordinator (QRC)" means an individual who is listed in the Registry of Qualified Rehabilitation Coordinators or Registry of In-House Qualified Rehabilitation Coordinators and is not a direct provider of therapeutic services.

(9) "Qualified rehabilitation coordinator intern (QRC Intern)" means an individual who meets the educational but not the certification requirements of a QRC and who is permitted a period of supervised employment under the guidance of a QRC.

(10) "Rehabilitation services" means both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710.

(11) "Suitable employment" means employment which is reasonable taking into consideration the injured employee's age education previous employment place of residence and limitations.

(12) "Vocational evaluation" means a comprehensive process which utilizes a combination of structured interviews paper and pencil tests and real or simulated work activities to assist the employee in identifying employment objectives.

(13) "Vocational rehabilitation services" means those vocationally related services which are necessary to restore an injured employee to suitable employment.

Section 2. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) An application for listing in the Directory of Qualified Rehabilitation Facilities is not necessary for facilities fully accredited by CARF in either comprehensive inpatient rehabilitation or outpatient medical rehabilitation as the names of these facilities are obtained from CARF.

(2) Provisional listing in the Directory of Qualified Rehabilitation Facilities may be granted by the Department of Workers' Claims to a facility which is licensed through the Cabinet for Human Resources pursuant to KRS Chapter 216B but whose application to CARF for accreditation is pending. The Department of Workers' Claims may grant provisional listing for a facility upon receipt of a letter requesting listing in the Directory accompanied by a copy of an application which has been submitted to CARF for accreditation in comprehensive inpatient rehabilitation or outpatient medical rehabilitation. The provisional listing shall be valid for one (1) year unless CARF accreditation is granted or denied prior thereto.

Section 3. Registry of Qualified Rehabilitation Coordinators. (1) To apply for listing in the Registry of Qualified Rehabilitation Coordinators, an individual shall submit an application containing the information requested and in the format shown in Appendix A submit supporting documentation as the Department of Workers' Claims may require. A QRC shall also provide such information as the Department of Workers' Claims may require for monitoring purposes. An applicant may be employed by a qualified rehabilitation agency in the public sector such as the Department of Vocational Rehabilitation or Department for the Blind or may be employed in the private sector.

(2) A QRC may be a rehabilitation nurse or a rehabilitation counselor who has complied with the following educational and certification requirements.

(a) Rehabilitation nurse. A rehabilitation nurse must be:

1. A registered nurse with a current nurse license or work permit in each state in which he or she will be physically present in a case management capacity with Kentucky workers' compensation claimants; and

2. Certified as a certified rehabilitation registered nurse by the Association of Rehabilitation Nurses or certified as a certified insurance rehabilitation specialist or certified case manager by the Board for Rehabilitation Certification.

(b) Rehabilitation counselor. A rehabilitation counselor must have attained the following educational credentials:

1. A baccalaureate master's or doctoral degree in rehabilitation counseling or a related field as defined by the BRC; and

2. Certified as a certified rehabilitation counselor certified insurance rehabilitation specialist or certified case manager by the Board for Rehabilitation Certification.

Section 4. Registry of QRC Interns. (1) An individual who meets the licensure and educational requirements but who does not meet the certification qualifications contained in Section 3 of this administrative regulation may apply to the Department of Workers' Claims for permission to work under the direct supervision of a QRC to obtain the experience required for the appropriate certification examination. During this period of supervised employment such individual shall be designated a QRC Intern.

(2) Upon meeting the experience requirement the QRC Intern shall apply to sit for the next available appropriate certification examination and shall provide the Department of Workers' Claims with a copy of the test results within seven (7) days of receipt. A candidate who receives a passing score may immediately apply to the Department of Workers' Claims for registration as a qualified rehabilitation coordinator. A candidate who did not receive a passing score shall be permitted one (1) more attempt to achieve a passing score at the next examination for which the candidate is eligible to participate. A qualified rehabilitation coordinator intern who fails two (2) certification examinations shall no longer be eligible to work as a qualified rehabilitation coordinator intern but may apply for registration as a QRC upon achieving the appropriate certification.

(3) Qualified rehabilitation coordinators and qualified rehabilitation coordinator interns shall provide the Department of Workers' Claims with copies of nurse licenses and notice of renewal of certification as a certified insurance rehabilitation specialist certified rehabilitation counselor certified rehabilitation registered nurse or certified case manager within seven (7) days of receipt.

(4) An individual who is employed by a qualified rehabilitation facility or other facilities which provide medical or rehabilitation services to workers' compensation claimants shall not be eligible to apply for listing in the Registry of Qualified Rehabilitation Coordinators Registry of In-House Qualified Rehabilitation Coordinators or Registry of Qualified Rehabilitation Coordinator Interns.

Section 5. Registry of In-House Qualified Rehabilitation Coordinators. (1) Nothing in these administrative regulations shall prevent self-insured employers self-insured groups or workers' compensation insurance carriers from referring injured employees to a QRC on their staff.

(2) In-house qualified rehabilitation coordinators shall be subject to the same qualification and reporting requirements as rehabilitation nurses and counselors listed in the Registry of Qualified Rehabilitation Coordinators.

Section 6. Referral of Injured Employees by the Self-Insured Employer or Insurance Carrier. (1) Self-insured employers and insurance carriers may voluntarily refer injured employees at any time for rehabilitation case management services involving the coordination of medical rehabilitation services and vocational rehabilitation services.

(2) Self-insured employers and insurance carriers may refer injured employees only to qualified rehabilitation coordinators registered with the Department of Workers' Claims.

Section 7. Referral of Injured Employees by Administrative Law Judges. (1) Administrative law judges may refer injured employees to rehabilitation counselors employed by the Department of Workers' Claims to obtain evaluations pursuant to KRS 342.710(3).

(2) The rehabilitation counselor to whom the case is assigned shall conduct an initial interview with the employee in the Department of Workers' Claims facility closest to the employee's residence or such other location as is reasonably convenient.

(3) Subsequent to the initial rehabilitation interview the rehabilitation counselor shall refer the employee for a vocational evaluation at a facility accredited by CARF in the area of vocational evaluation.

(4) Absent medical incapacitation or other compelling circumstance the employees shall attend initial rehabilitation interviews and vocational evaluations when scheduled.

(5) The employees' travel expenses to attend the initial rehabilitation interview and the cost of the vocational evaluation including travel expenses shall be paid by the employer or other parties designated by the administrative law judge. The employee's travel expenses shall be reimbursed in accordance with state travel regulations and standards as promulgated and established pursuant to KRS Chapter 18A.

(6) Upon receipt of the vocational evaluation report the employee and employer/insurance carrier shall cooperate in the implementation of services designed to restore the employee to suitable employment. by reference.

Section 8. 803 KAR 25:100 Procedures for workers' compensation rehabilitation is hereby repealed.

APPENDIX A

Application for Registration as a Qualified Rehabilitation Coordinator or Qualified Rehabilitation Coordinator Intern
Department of Workers' Claims
Frankfort, Kentucky 40601

APPLICATION FOR REGISTRATION

I. REGISTRATION FOR WHICH APPLICATION IS SUBMITTED: (CHECK A, B, OR C)

A. QUALIFIED REHABILITATION COORDINATOR
B. IN-HOUSE QUALIFIED REHABILITATION COORDINATOR
C. QUALIFIED REHABILITATION COORDINATOR INTERN

REHABILITATION COUNSELORS ONLY:

CRC No. Expiration Date
CIRS No. Expiration Date
CCM No. Expiration Date

REHABILITATION NURSES ONLY:

Ky. Nurse License No. Expiration Date
Complete one of the following:
CIRS No. Expiration Date
CRRN No. Expiration Date
CCM No. Expiration Date

II. IDENTIFYING DATA

Name: (Last, First, Middle)
Home Address: (Street, City, State, Zip)
Home Telephone Number: (area code) - (number)
Social Security Number:
Company Name:
Office Address: (Street, City, State, Zip)
Office Telephone Number: (area code) - (number)

If you have ever been fined or convicted or are now under charges for any violation of law please describe.
List any languages other than English which you speak and write:

Are you able to communicate in sign language with persons with hearing impairments?

Describe service area (statewide or other explain):

III. EDUCATIONAL DATA

Name & Address of College:
Graduation Date:
Major:
Minor:
Degree:

IV. EMPLOYMENT DATA

Describe your work history in detail. Beginning with your current or most recent job describe fully your duties and responsibilities. Include reason for leaving each job. Use additional sheets as necessary.
Employer:
Address:
Telephone Number: (area code) - (number)
Name and Title of Immediate Supervisor:
Your Job Title(s):
Dates of Employment:
Duties:

Employer:
Address:
Telephone Number: (area code) - (number)
Name and Title of Immediate Supervisor:
Your Job Title(s):
Dates of Employment:
Duties:

Employer:
Address:
Telephone Number: (area code) - (number)
Name and Title of Immediate Supervisor:
Your Job Title(s):
Dates of Employment:
Duties:

Employer:
Address:
Telephone Number: (area code) - (number)
Name and Title of Immediate Supervisor:
Your Job Title(s):
Dates of Employment:
Duties:

List other names under which education or employment may be verified:

V. The applicant by virtue of his notarized signature on this application hereby attests:

1. The Department of Workers' Claims is authorized to investigate any information in this application. I understand any substantial omission or misrepresentation may result in rejection of my application or revocation of my registration.

2. I agree to promptly submit any information requested for registration or monitoring purposes.

3. I agree to attend training sessions sponsored by the Department of Workers' Claims at such times and places as may be deemed necessary.

4. I agree to notify the Department of Workers' Claims within one week of a change in my employment status loss of required license or certification or other occurrence which is likely to affect my registration status.

5. Enclosed is a copy of each license or certificate I described in Section I.

6. Unless I am a nurse submitting a copy of my current Kentucky license or a rehabilitation counselor submitting a copy of my current CRC CIRS or CCM certificate attached is a copy of my letter to each college listed in Section III requesting a copy of my official transcript be mailed to: Department of Workers' Claims Rehabilitation Branch, Perimeter Park West, 1270 Louisville Road, Building C, Frankfort, Kentucky 40601.

7. Attached is a current description of services provided and fees charged to the employer/carrier. I agree to submit updated descriptions of services and fees within seven (7) days of the effective date

of change.

Signed Date:
Notary:
My Commission Expires:
Date:

WALTER W. TURNER, Commissioner
APPROVED BY AGENCY: July 14, 1994
FILED WITH LRC: July 14, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on August 23, 1994. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1994, 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 and prior arrangements for a transcript are made five days prior to the hearing. 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: Valerie L. Salven, General Counsel, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, (502) 564-5550.

REGULATORY IMPACT ANALYSIS

Contact Person: Oscar Morgan
(1) Type and number of entities affected: This administrative regulation will affect about 300-500 qualified rehabilitation coordinators and QRC interns, as well as employers, insurance carriers, injured workers and others involved in the voluntary provision of rehabilitation services to workers' compensation patients.
(a) Direct and indirect costs or savings to those affected:
1. First year: An amendment to KRS 342.710 made by HB 928 provides that rehabilitation services may be provided voluntarily prior to an order from an administrative law judge. Preference shall be given to returning the employee to employment with the same employer or to the same or similar employment. This regulation will not result in any specific cost or savings to those affected, but will permit all concerned to utilize a directory of qualified rehabilitation coordinators and QRC interns maintained by the Department of Workers' Claims.
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: QRC's and QRC interns who wish to be included in the directory maintained by the Department of Workers' Claims will have to submit an application containing concerning their credentials.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Since a directory and QRC's and interns was maintained by the Department of Workers' Claims prior to the passage of HB 928, there will be no additional costs concerned with maintenance of the directory.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs: Costs may decrease if number of applicants for inclusion in the directory decrease.
(b) Reporting and paperwork requirements: Maintenance of directory of QRC's and QRC interns.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative method: Mandatory certification of facilities or QRC's is no longer required, as a result of House Bill 928.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict since 803 KAR 25:100 is being concurrently repealed, and has already expired as a result of House Bill 928.
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Is tiering applied? Yes. Qualified rehabilitation facilities that are already fully accredited by CARF (Commission on Accreditation of Rehabilitation Facilities) need not submit an application for inclusion in the directory, and provisional listings of facilities are granted to facilities whose application to CARF for accreditation is pending. There are different registries for QRC's and QRC interns.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals

805 KAR 5:050. Performance bond for wages due from licensee.

RELATES TO: KRS 337.200, 351.175, 352.540
STATUTORY AUTHORITY: KRS Chapter 13A, KRS 351.070(13)
NECESSITY AND FUNCTION: KRS 352.540 requires that persons employed in mining work be paid on or before the 15th and 30th days of each month; KRS 337.200, in speaking of employers engaged in the severance, preparation, or transportation of minerals, requires every such employer who has been doing business in Kentucky for fewer than five (5) consecutive years to post a performance bond to assure the payment of all wages due from that employer. This administrative regulation requires the posting of that performance bond as an element of applying for the license required in KRS 351.175 for the mining of coal or clay.

Section 1. Unless an employer has been engaged in the mining of coal or clay in Kentucky for five (5) consecutive years, as a part of his application for the license required by KRS 351.175, he shall demonstrate to the satisfaction of the Department of Mines and Minerals that he has satisfied the requirements of KRS 337.200 by posting a performance bond for wages due.

Section 2. No license shall be issued to any person who fails to secure the performance bond required by KRS 337.200 or who the Department of Mines and Minerals determines has failed to document his having posted it with the Labor Cabinet.

Section 3. The Labor Cabinet shall timely advise the Department of Mines and Minerals of any claim for unpaid wages which has been asserted against the performance bond required by KRS 337.200.

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner
APPROVED BY AGENCY: July 12, 1994
FILED WITH LRC: July 13, 1994 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, August 23, 1994, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who

wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Eugene D. Attkisson, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, (606)254-0367.

REGULATORY IMPACT ANALYSIS

Agency Contact: Eugene D. Attkisson

(1) Type and number of entities affected: This proposed administrative regulation would be applicable to holders of mining licenses who have been doing business for fewer than five (5) consecutive years and to their employees. Of the nearly 1400 mining licenses issued by this agency in 1993, 322 were issued to operations which had not previously held a mining license; based upon that data, approximately 1200 licensees (322 x 4 years) and their employees could be affected by this administrative regulation.

(a) Direct and indirect costs or savings to those affected: The costs to affected licensees would be in the form of the premiums payable for the required performance bonds; the savings, if any, would be realized by those licensees' employees who would receive wages paid under the bonds, and who would otherwise possibly not be paid.

1. First year:

2. Continuing costs or savings: The costs or savings attributable to this proposed administrative regulation will presumably be reasonably consistent, in that as one (1) group of licensees and employees becomes exempt from the administrative regulation when their operations reach the required 5-consecutive-years-of-operation standard, another group of new operators and their employees will become subject to this proposed administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No effects upon competition are anticipated as a result of this administrative regulation, since all persons similarly situated, i.e., those who have maintained a mining operation for fewer than five (5) consecutive years, will be equally impacted.

(b) Reporting and paperwork requirements: Each prospective licensee would be required to "demonstrate to the satisfaction of the Department of Mines and Minerals that he has satisfied the requirements of KRS 337.200 by posting a performance bond for wages due," Section 1.

(2) Effects on the promulgating administrative body: This agency would be required to determine the longevity of each mining operation licensed by it and to require the posting of the subject performance bond by all licensees who have been doing business for fewer than five (5) consecutive years; this latter task would necessitate a sharing of information between this agency and the Labor Cabinet concerning the posting of performance bonds.

(a) Direct or indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Since we annually issue licenses to mining operations, our mine licensure process is well-established; little or no additional costs are therefore anticipated as a result of the enactment of this proposed administrative regulation.

(b) Reporting and paperwork requirements: As noted above, this agency would ascertain that a prospective licensee has posted the required performance bond as a part of its mine licensure process; information concerning the posting of that bond and its documentation would be included in the mine license file which we maintain for each licensee.

(3) Assessment of anticipated effect on state and local revenues: Little if any effect on state and local revenues is anticipated as a result of the enactment of this proposed administrative regulation, apart from the additional monies, in the form of salaries and applicable taxes, which would be paid to and payable by employees who receive wages pursuant to the wage protection afforded them by the required performance bond.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the enactment of this proposed administrative regulation would be to leave unchanged the present body of mine licensure requirements administered by this agency; since such requirements do not presently include the provision of wage payment protection to the employees of operations which have been licensed for fewer than five (5) consecutive years, we believe this proposal represents significantly greater protection for the employees of impacted licensees.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Although KRS 337.200 speaks of the posting of the performance bond which this proposed administrative regulation would require as a part of our mine licensure process, that statute supports the promulgation of this proposal; no statute, administrative regulation, or government policy either conflicts with, overlaps, or duplicates this proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

There is no conflict.

(6) Any additional information or comments: We believe that the enactment of this proposed administrative regulation will ensure that the employees of potentially hundreds of mining operations will receive wages which they otherwise might not receive following the financial collapse of their employers, and that the benefit of that wage protection is disproportionately greater than the financial cost to licensees which are required to post a performance bond in the circumstances described in the proposal.

TIERING: Was tiering applied? Yes. Tiering was applied in the promulgation of this proposed administrative regulation, which initially differentiates between all employers and those engaged in the severance, preparation, or transportation of minerals; and then further creates a distinction for purposes of enforcement between all mine licensees and those who have been licensed by this agency for fewer than five (5) consecutive years.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Mines and Minerals

805 KAR 5:060. Electrical mine safety standards.

RELATES TO: KRS 351.109, 352.220, 352.230

STATUTORY AUTHORITY: KRS Chapter 13A, 351.070(13)

NECESSITY AND FUNCTION: This administrative regulation establishes safety standards for the use of electricity in the operation of the Commonwealth's underground and surface coal and clay mines, which include strip and auger mining operations.

Section 1. Definitions. (1) "Apprentice electrical worker" means an individual who has completed an apprentice electrician's course of instruction approved and administered by the department, which shall include a passing grade of a minimum of eighty (80) percent on a written examination.

(2) "Controller" means a device or group of devices that govern in some predetermined manner the electric power delivered to the apparatus to which it is connected; when used as a motor controller, the device shall start and stop the motor by making and breaking the

motor circuit current.

(3) "Direct supervision" means that a supervisor is physically present to advise, instruct, and consult with an employee performing electrical work and includes disconnecting, locking out, and tagging all electrical equipment on which a trainee will be working, and examining the work performed before the circuits or equipment are returned to service.

(4) "Equipment grounding" means a system whereby all noncurrent-carrying metal parts of the wiring system or equipment that are accessible to personal contact are connected to ground, which produces the effect of limiting the voltage between the metal frames of any two (2) units of equipment in the system, and limits the voltage between the metal frames of equipment and the earth to a safe value under all conditions of system operation.

(5) "Equipment-grounding conductor" means the conductor used to connect the noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the system-grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

(6) "Extended time-rated grounding resistor" means a resistor that is capable of carrying rated current for a period of time which exceeds the amount of time for the resistor's temperature to reach a constant value.

(7) "Fail safe" means designed and installed in a manner that will ensure proper operation of a device under normal and abnormal conditions.

(8) "Grounded conductor" means a system or circuit conductor that is intentionally grounded.

(9) "Master electrician" means an individual who has been certified by the department as a master electrician.

(10) "Mobile equipment" means equipment that is self-propelled.

(11) "Overload" means operation of equipment in excess of the normal, full-load rating which, if that operation persists for a sufficient length of time, causes damage or dangerous overheating.

(12) "Portable equipment" means electrically-powered equipment which is designed and constructed to facilitate movement from one (1) location to another, or which because of conditions of use may not remain at a fixed location for extended periods of time.

(13) "Proper fitting" means a fitting whose design has been approved by the department.

(14) "Readily accessible" means capable of being reached quickly for operation, maintenance, or inspection, without requiring those to whom ready access is requisite to climb over or remove obstacles.

(15) "Short-circuit" means a condition whereby the circuit current is taking a path short of its intended path; abnormally high currents flow due to the decreased opposition supplied by the circuit.

(16) "Special permission" means the obtaining of the written consent of the authority having jurisdiction over a device or practice to use that device or pursue a practice in a specified manner.

(17) "Suitable" means approved by the department.

(18) "System grounding" means a direct or derived neutral conductor intentionally connected to earth which can cause the circuit breaker to automatically open the circuit if an accidental ground fault occurs at one of its ungrounded conductors.

(19) "Workmanlike manner" means a manner that is consistent with standards determined by the department to provide safety and to comply with established professional practices and methods utilized in the electrical industry.

Section 2. General Electrical Mine Safety Standards. (1) All power circuits and electrical equipment shall be deenergized before work is done on those circuits and equipment, except when necessary for troubleshooting or testing. Energized troubleshooting or testing are subject to approval by the department.

(2) No electrical or permissibility work shall be performed on electrical circuits or equipment by any person other than one who is currently qualified and certified as an electrical worker by the department or by a person trained to perform electrical work under the direct supervision of a qualified person who is physically present. The training required shall include task training and an electrical hazards class approved and administered by the department. All mines shall have a qualified and certified electrical worker present on all working shifts.

(3) Areas containing major electrical installations shall be entered only by authorized personnel.

(4) Suitable danger signs shall be posted at all major electrical installations.

(5) The location and the electrical rating of all stationary electrical apparatuses in the mine electrical system shall be indicated on a mine map. Any changes in the electrical system shall be indicated on the map within twenty-four (24) hours of completion of the change. The map shall be made available to an authorized representative of the department upon request.

(6) All electrical wiring and equipment shall be installed and maintained in a workmanlike manner.

(7) Inspection and cover plates on electrical equipment shall be kept in place at all times except during testing or repairs.

(8) Cables and wires shall enter compartments only through proper fittings and suitable strain protection shall be provided for all cables and wires.

(9) Neither crawler-mounted nor rubber-tired equipment shall run over trailing cables, unless the cables are properly bridged or otherwise protected.

(10) If equipment is moved under energized power lines and the clearance is less than ten (10) feet, the power lines shall be deenergized or other precautions approved by the department shall be taken to ensure that equipment does not come in contact with energized power lines.

(11) Telegraph, telephone, or signal wires shall not be installed on the same crossarm with power conductors; when carried on poles supporting power lines, they shall be installed in a manner specified by the National Electrical Code, as amended.

(12) Transformers shall either be totally enclosed, placed at least fifteen (15) feet above the ground, installed in a transformer house, or surrounded by a substantial fence at least six (6) feet high and at least three (3) feet from any energized parts, casings, or wiring.

(13) Transformer enclosures shall be kept locked against unauthorized entry.

(14) Persons traveling near bare power conductors shall carry tools and supplies in their hands and not on their shoulders.

(15) Operating controls shall be installed in a manner which enables them to be operated without danger of contact with energized conductors.

(16) Equipment with booms or masts which are not properly protected shall not be operated where the booms or masts can come within ten (10) feet of an energized overhead powerline.

(17) Surplus trailing cables to shovels, cranes, and similar equipment shall be stored in cable boots or on reels mounted on the equipment or otherwise protected from mechanical damage.

(18) Installations shall be made in a manner to ensure that there is no difference of potential between earth, frames, casings, and enclosures of electrical equipment.

(19) Electrical connections and resistor grids that are difficult or impractical to insulate shall be guarded, unless protection is provided by location.

(20) Metal fencing and metal buildings enclosing transformers and switch-gear shall be grounded.

(21) Continuity and resistance of grounding systems shall be tested immediately after installation.

(22) Guy wires from poles supporting high voltage transmission lines shall be securely connected to the system ground or be provided with insulators installed in an approved manner near the pole end.

(23) Single-phase loads on three (3) phase resistance grounded

systems shall be connected phase to phase; the grounded neutral conductor of any single-phase system shall not be used as the equipment grounding conductor.

(24) Circuits shall be deenergized before fuses are removed or replaced.

(25) Fuse tongs or hot line tools shall be used when fuses are removed or replaced in medium or high voltage circuits.

(26) At least three (3) feet of clearance shall be provided around all parts of stationary electrical equipment or switch gear if travel near them is necessary.

(27) Reverse-current protection shall be provided at storage battery-charging stations.

(28) Electrical equipment and circuits shall be provided with switches or other controls, which shall be of approved design and construction and properly installed.

Section 3. Disconnecting Devices. (1) Suitable disconnecting devices that will provide visual evidence that the power is disconnected shall be locked open and suitably tagged by the person who performs work on electrical circuits or equipment. Locks and tags shall be removed only by the person who installed them, or by a person authorized by the mine foreman in emergency situations. High voltage disconnects shall be operated only by properly trained, qualified and certified electrical workers. The high voltage circuits shall be properly grounded on the deenergized end before work is begun.

(2) Disconnecting devices shall be:

(a) Provided for all electrical equipment and circuits at locations approved by the department;

(b) Plainly marked and identified;

(c) Designed in such a manner that it can be determined by visual observation that all ungrounded power conductors of the circuit are disconnected;

(d) Designed in such a manner that the disconnect can be locked in the open position;

(e) Of voltage and current ratings approved by the department; the minimum ampere rating shall be at least 115 percent of the full-load current rating of the equipment;

(f) Properly grounded;

(g) Within a distance of equipment approved by the department, not to exceed fifty (50) feet and a direct line of sight when practical, unless otherwise specified;

(h) Readily accessible.

(3) When power circuits enter the underground area of a mine, approved disconnecting devices shall be installed on the surface at locations approved by the department; when power circuits enter the underground area through a shaft or borehole, disconnecting devices shall be installed underground at locations approved by the department.

(4) High voltage disconnecting switches shall be operated only with approved insulated sticks, fuse tongs, or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he is or may be exposed; the person operating such devices shall wear approved high voltage gloves.

(5) High voltage protective equipment shall be provided and properly maintained by the mine operator; testing of high voltage protective equipment shall be performed as often as deemed necessary by the department, not to exceed thirty (30) days for gloves and one (1) year for any other equipment.

Section 4. (1) Controllers used in a mine shall:

(a) Govern the power delivered to electrically powered equipment and apparatus when deemed necessary by the department;

(b) Be capable of starting and stopping the equipment controls and of interrupting the stalled-rotor current of any motor they control;

(c) Be of voltage and current ratings approved by the department.

(2) A motor controller shall have a horsepower rating not lower than the horsepower rating of the motor it controls.

(3) Each motor shall be provided with an individual controller unless the department determines that the design of the circuit or machine renders this requirement unnecessary or impractical.

Section 5. All electrical equipment shall be examined, tested, and properly maintained by a qualified and certified electrical worker to ensure safe operating conditions. The examinations and tests shall be required as often as deemed necessary, but shall not be performed less frequently than once every seven (7) days unless otherwise specified in this administrative regulation. When a potentially dangerous condition is found on electrical equipment, the equipment shall be removed from service until the dangerous condition is corrected. A record of these required examinations and tests shall be kept in an approved book and made available to an authorized representative of the department upon request.

Section 6. All electrical conductors shall be of a size and current-carrying capacity to ensure that a rise in temperature resulting from normal operating conditions does not damage the insulation or conductors. All electrical conductors, power wires, and cables shall have insulation with a dielectric rating at least equal to the nominal voltage of the circuit in which it is used. The minimum standards set forth in the National Electrical Code, as amended, and the Insulated Cable Engineers' Association tables, as amended, shall be used as a guide in determining proper conductor sizes.

Section 7. All communications and power wires, except trailing cables on mobile equipment and specially designed high voltage feeder cables, shall be supported on approved well-insulated insulators and shall not contact combustible materials, roof, or ribs. All wires and cables shall be protected from damage from moving equipment, accumulations of water, and unstable roof and ribs. Locations of cables at grade level shall be properly marked by suitable signs. Vertical and horizontal clearances between overhead conductors and accessible grade level shall be maintained in a manner approved by the department. Clearances of overhead power wires shall be marked with suitable signs if there is a possibility of contact by traffic passing underneath them.

Section 8. (1) Trailing cables used in mines shall be:

(a) Flame resistant;

(b) Provided with short-circuit protection by an automatic circuit breaker or other no less effective device approved by the department of adequate current-interrupting capacity in each ungrounded conductor;

(c) Provided with short-circuit protection calibrated so as not to exceed the maximum allowable settings permitted by the department;

(d) Provided with an approved disconnecting device;

(e) If energized, handled only by trained persons wearing approved gloves having a dielectric strength at least equal to the voltage of the cable, or other approved cable-handling device;

(f) Protected from damage.

(2) Permanent splices shall be:

(a) Mechanically and electrically efficient;

(b) Insulated and sealed to exclude moisture;

(c) Joined by suitable connectors installed in an approved manner;

(d) Of flame resistant materials.

(3) A means shall be provided to ensure against the connection of a cable to the wrong size of protective device.

(4) Trailing cable and power cable connections to junction boxes shall not be made or broken under load.

(5) Trailing cables for medium voltage circuits shall be shielded, but equipment employing cable reels may use cables without shielding if their insulation is rated at not less than 2000 volts.

Section 9. All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used in an approved manner. All electrical connections or splices in insulated wires shall be reinsulated at least to the same degree of protection as the remainder of the wire or cable. In addition, medium and high voltage cable splices shall have semiconducting tape and metallic shielding properly replaced.

Section 10. Each ungrounded exposed power conductor and each communication wire that leads underground shall be equipped with suitable lightning arrestors of approved type and installation, at or near the point where the circuit enters the mine. Lightning arrestors shall be connected to a low resistance grounding medium on the surface, which shall be separated from neutral grounds at a distance approved by the department.

Section 11. The maximum level of electrical current that exists between the frames of any two (2) units of electric equipment that may come in contact with each other in a mine shall not exceed one (1) ampere as determined from the voltage measured across a one-tenth (0.1) ohm resistor connected between the frames of that equipment.

Section 12. (1) Metallic frames, casings, and other enclosures of electrical equipment that can become energized through failure of any of the circuit components shall be grounded by methods approved by the department.

(2) Approved methods shall include an effective grounding path to ground from circuits, equipment, and metal enclosures for conductors which shall:

(a) Be permanent and continuous;

(b) Have capacity to conduct safely any fault current likely to be imposed on them;

(c) Have sufficiently low impedance to limit the voltage to ground and to facilitate the operation of the circuit protective devices in the circuit; the earth shall not be used as the sole equipment grounding conductor.

(3) Grounding and grounded conductors shall be marked and identified by methods approved by the department.

(4) Direct current equipment, excluding battery-powered equipment, shall be grounded by methods approved by the department and may include both system grounding and equipment grounding.

(5) Equipment receiving power from single-phase transformers shall be grounded to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer.

(6) Stationary electrical equipment located on the surface shall be grounded by a method approved by the department and may include both system grounding and equipment grounding.

(7) Three (3) phase circuits supplying power to portable or mobile electrical equipment on the surface and three (3) phase circuits extending or originating underground supplying power to portable, mobile, or stationary equipment shall contain a direct or derived neutral which shall be grounded through a suitable resistor at the power center. A grounding circuit originating at the grounded side of the grounding resistor shall extend along with the power conductors and serve as a grounding conductor for the frames of such equipment.

(8) If required, grounding resistors shall:

(a) Have resistance values that limit ground fault current to twenty-five (25) amperes or less on low and medium voltage systems;

(b) Have resistance values that limit voltage drop between the grounding medium and any unit of high voltage equipment to 100 volts or less during a ground fault;

(c) Have extended-time current ratings at least equal to the maximum ground fault current that can flow through the resistor;

(d) Be supported by insulators which have voltage ratings that are at least equal to the line-to-line voltage of the system;

(e) Be tested weekly for continuity and damage by a qualified electrical worker.

(9) Resistance-grounded systems shall have ground wire monitors approved by the department with fail safe devices to continuously monitor the continuity of the grounding circuits. The monitors shall cause the affected circuit breaker to open when:

(a) Either the equipment grounding conductor or the ground-check conductor is broken at any point;

(b) The impedance of the grounding circuit external to the grounding resistor would cause more than a forty (40) volt drop in the grounding circuit under ground-fault conditions on low and medium voltage circuits or 100 volts on high voltage circuits; ground- check and equipment grounding conductors shall be separately connected to the metallic frames or enclosures of electric equipment.

(10) Equipment grounding conductors shall be the first conductor made when making connections and the last conductors broken when breaking connections.

(11) The grounding electrode system shall:

(a) Have resistance to earth of a value approved by the department not to exceed twenty-five (25) ohms;

(b) Be constructed of materials and components that are approved for use by the department;

(c) Be installed in a manner approved by the department;

(d) Be separated from other ground fields by distances approved by the department;

(e) Be tested at the time of installation and at intervals not to exceed six (6) months thereafter for resistance to earth and the test results recorded in the electrical examination book approved by the department;

(f) Be properly marked and identified.

Section 13. (1) All electrical equipment and circuits shall be protected by circuit protective devices of a type and capacity and incorporating a circuit scheme approved by the department.

(2) Power circuits serving three (3) phase resistance grounded alternating current equipment shall be protected against undervoltage, short-circuits, overloads, and ground faults by devices which comply with the following:

(a) The undervoltage device shall be fail safe and shall open the circuit breaker when the line voltage decreases to forty (40) percent of nominal or less;

(b) Overload devices shall:

1. Adequately protect the load;

2. Deenergize the circuit when currents exceed the maximum values allowed by the department;

3. Deenergize all three (3) phases in the event any phase is overloaded;

(c) Ground fault detection devices shall deenergize the circuit at forty (40) percent or less of the maximum ground fault current of the system;

(d) Short-circuit protective devices shall deenergize the circuit when currents exceed the maximum values allowed by the department;

(e) Short-circuit and overload protective devices shall provide at least the minimum protection required by the National Electrical Code, as amended, or the applicable schedules of the United States Bureau of Mines, as amended;

(f) Alternate settings on any of the protective devices may be permitted or required by the department when it has been determined by the department that special applications are justified.

(3) All electrical equipment and circuits shall be protected against short-circuits and overloads by devices which shall deenergize the circuits when currents exceed the maximum values allowed by the department. Maximum values of current shall be determined in accordance with subsection (2)(e) of this section.

Section 14. (1) Circuit breakers and their auxiliary devices shall be tested and examined by a qualified and certified electrical worker as often as deemed necessary by the department, but not less frequently than every thirty (30) days.

(2) The tests required by this section shall include:

(a) A visual examination of all components of the circuit breaker and its auxiliary devices;

(b) An approved test of the ground monitoring device, if required;

(c) An approved test of any of the other auxiliary devices or control circuits that will cause the circuit breaker to open.

(3) Repairs or adjustments indicated by these tests and examinations shall be performed immediately.

(4) Circuit-protective devices shall be located in areas which are readily accessible, have safe roof and ribs, are clear of moving equipment, have adequate clearances, and are clear of accumulations of water.

Section 15. Portable Power Centers and Transformers. (1) Prior to being moved, portable power centers and transformers shall be deenergized by use of an approved disconnecting device which is locked open and suitably tagged by a qualified and certified electrical worker. Energized power centers and transformers may be moved only by special permission obtained from the department prior to their movement.

(2) All covers and removable panels shall be properly secured in the closed position.

(3) High voltage distribution equipment shall be equipped with interlocks and emergency stop switches to automatically deenergize the incoming power conductors when a cover, lid, or panel that exposes high voltage wiring or equipment is removed, or if the emergency stop switch is actuated.

(4) The design of portable power centers, including circuit protective devices, safety switches, controls, and conductor sizes, shall be subject to approval by the department.

(5) When deemed necessary by the department to ensure the safety of personnel, other safety devices and controls shall be installed on portable power centers.

Section 16. Dry wooden platforms, insulating mats, or other electrically nonconductive materials shall be kept in place at switchboards and power-control switches where shock hazards exist. However, metal plates on which a person normally would stand may be used if they are kept at the same potential as the grounded metal, noncurrent-carrying parts of the power switches to be operated.

Section 17. Motors, transformers, circuit breakers, and similar types of electrical equipment shall have a nameplate or durable marking indicating the manufacturer's name, rated voltage, rated current, and any other information deemed necessary by the department. Suitable wiring diagrams and schematics of electrical equipment used in a mine shall be kept at the mine and be made available to a representative of the department upon request.

Section 18. (1) Approved methane monitors shall be required on face equipment when deemed necessary by the department.

(2) If required, methane monitors shall:

(a) Automatically deenergize face equipment when the monitor is not operating properly or when the concentration of methane reaches a minimum of two (2.0) percent;

(b) Automatically give a warning when the concentration of methane reaches one (1.0) percent;

(c) Be examined by a qualified person for operating accuracy as often as deemed necessary by the department, but not less frequently than every thirty (30) days; these examinations shall be performed in accordance with manufacturers' specifications and approved by the department;

(d) Be calibrated as often as necessary to maintain operating accuracy, and a record of the calibration and tests kept in a book approved by the department.

Section 19. All electrical equipment and circuits installed on the surface after the effective date of this administrative regulation shall meet the minimum requirements of the National Electrical Code, as amended, in effect at the time of installation, unless the department determines that compliance with those minimum requirements would create a conflict with established mining laws or that a hazardous condition would be created by virtue of that compliance.

Section 20. All electrical equipment used in hazardous locations as defined by the National Electrical Code, as amended, shall be approved for the location in which it is used and shall be installed and maintained in accordance with the manufacturer's instructions and consistent with any instructions included in the listing or labeling by an organization acceptable to the department.

Section 21. All required examinations and tests of electrical equipment shall be performed by a qualified and certified electrical worker and shall be subject to monitoring by an electrical inspector employed by the department. Required electrical qualification and certification examinations and electrical hazards classes required for apprentice electrical workers shall be administered by an electrical instructor employed by the department. Electrical retraining classes are subject to approval and monitoring by the department.

Section 22. 805 KAR 3:090 is hereby repealed.

EDWARD J. HOLMES, Secretary
BURL SCOTT, Commissioner
APPROVED BY AGENCY: July 13, 1994
FILED WITH LRC: July 13, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Wednesday, August 24, 1994, at 10 a.m., prevailing local time, in the first floor conference room of the Department of Mines and Minerals, Administration Building, 3572 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 19, 1994, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Eugene D. Attkisson, Kentucky Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512, (606)254-0367.

REGULATORY IMPACT ANALYSIS

Agency Contact: Eugene D. Attkisson

(1) Type and number of entities affected: As of June 30, 1994, this agency had issued licenses to 619 surface mines and 459 underground mines. While this administrative regulation would be applicable to both underground and surface mines, KRS 352.220 and 352.230 currently contain many of the electrical standards which this proposal would explicitly make applicable to both types of mines. There is therefore little additional impact upon underground mines and no such impact upon surface mines - whose electrical safety practices are currently subject to 805 KAR 3:090, which this proposed administrative regulation would repeal - as a result of this proposal.

(a) Direct and indirect costs or savings to those affected:

1. First year:

2. Continuing costs or savings: Since surface and underground mines are currently required to satisfy electrical safety standards, and are inspected to ascertain compliance with those standards, there are no anticipated costs or savings, either direct or indirect, as a result of this proposed administrative regulation.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors which bear upon either the applicability or amount of the costs of satisfying the electrical safety standards represented by this proposed administrative regulation.

(b) Reporting and paperwork requirements: Since mine operators are currently required to comply with applicable electrical mine safety standards, no changes regarding reporting and paperwork requirements are anticipated.

(2) Effects on the promulgating administrative body: This agency anticipates no additional administrative responsibilities as a result of this proposal.

(a) Direct or indirect costs or savings:

1. First year:

2. Continuing costs or savings: Since surface and underground mines are currently required to satisfy electrical safety standards, and are inspected by agency personnel to ascertain compliance with those standards, there are no anticipated costs or savings, either direct or indirect, as a result of this proposed administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors which bear upon the costs of this agency's enforcement of the electrical mine safety standards set out in this proposed administrative regulation.

(b) Reporting and paperwork requirements: Since this agency's inspectors currently ascertain and report the degree of compliance with applicable electrical mine safety standards, no changes regarding reporting and paperwork requirements are anticipated.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated as a result of the approval of this proposed administrative regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation is proposed in order to bring greater uniformity and consistency to the electrical safety standards applicable to both surface and underground mines and to the inspections which ascertain compliance with those standards. The alternative to this proposal is to leave unchanged the current body of standards, which variously appear in both statutes and administrative regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposed amendment neither conflicts with nor duplicates any statute, administrative regulation or government policy; it partially overlaps KRS 352.220 and 352.230, which variously contain both surface and underground electrical mine safety standards.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: In addition to providing for greater uniformity and consistency, described in (4), this proposed administrative regulation also creates a more centralized and specific body of electrical mine safety standards than currently exists.

TIERING: Was tiering applied? Yes. Tiering was applied in the promulgation of this proposed administrative regulation because while certain electrical safety standards are universal in all situations, the use of electricity in surface and underground mines requires standards of safety and proficiency which are different from other uses.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 46:020. Liability self-insurance group agent license.

RELATES TO: 1994 Ky. Acts ch. 358

STATUTORY AUTHORITY: 1994 Ky. Acts ch. 358, §§10, 23

NECESSITY AND FUNCTION: 1994 Ky. Acts ch. 358, §10 provides that the Commissioner of Insurance shall promulgate reasonable administrative regulations as are necessary to provide for the licensing of agents appointed or sponsored by the liability self-insurance group and the termination or revocation of such license. 1994 Ky. Acts ch. 358, §23 provides that the commissioner may promulgate reasonable administrative regulations that are necessary to properly administer this subtitle.

Section 1. Definitions. (1) The definition of "agent" is governed by 1994 Ky. Acts ch. 358, §2(12).

(2) The definition of "general lines agent" is governed by KRS 304.9-030.

(3) "Profit or pecuniary gain" means any type of compensation that a person receives from the liability self-insurance group for which the solicitation or enrollment of members is made.

Section 2. Anyone who engages for profit or pecuniary gain in the solicitation or enrollment of persons in a liability self-insurance group shall be licensed as a general lines agent in accordance with the requirements of KRS Chapter 304 and any applicable administrative regulations.

Section 3. Any agent exercising their general lines license under the 1994 Ky. Acts ch. 358 shall be subject to probation, suspension, revocation, and civil penalties in accordance with KRS Chapter 304 and any applicable administrative regulations.

Section 4. (1) An agent shall not place any insurance with a liability self-insurance group unless that agent has a general lines license and an appointment with the liability self-insurance group.

(2) A liability self-insurance group shall not accept any insurance from an agent unless that agent has a general lines license and an appointment with the liability self-insurance group.

(3) Each liability self-insurance group appointing an agent shall notify the commissioner by filing written notice in duplicate with the commissioner on forms prescribed and furnished by him, and shall pay the fee as provided in KRS 304.4-010. If the agent is then licensed, or as soon as licensed, the commissioner shall mail the appointment certificate to the liability self-insurance group.

(4) Each appointment shall continue in force until:

(a) The commissioner notifies the liability self-insurance group that the agent's license is suspended or revoked;

(b) The appointment is terminated by the liability self-insurance group by written notice of termination filed with the commissioner; or

(c) The liability self-insurance group fails to renew the appointment.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 28, 1994

FILED WITH LRC: July 1, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 17, 1994, 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 by 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. Written comments must be received prior to 10 a.m. (ET), on August 22, 1994, in order to receive consideration. 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: Sharron S. Burton, Counsel, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, ext. 249.

REGULATORY IMPACT ANALYSIS

Contact Person: Sharron S. Burton

Need for the proposed regulation: Under the new legislation, 1994 Ky. Acts ch. 358, §10, the Commissioner of Insurance is required to promulgate administrative regulations for the purpose of regulating the licenses of agents appointed or sponsored by certain liability self-insurance groups. This proposed administrative regulation makes the licensing requirements for agents of liability self-insurance groups consistent with the licensing requirements relating to agents of other liability insurance. The commissioner may also promulgate administrative regulations necessary to properly administer this new legislation under 1994 Ky. Acts ch. 358, §23.

Type and number of entities affected: There are 5 liability self-insurance groups which hold a certificate of filing from the Department of Insurance. The exact number of agents who represent these 5 groups is uncertain since the department has no records regarding unappointed agents.

a. Direct and indirect cost or savings to those affected:

1. First year: Liability self-insurance groups shall pay a fee to appoint an agent. Unlicensed agents will be required to obtain a general lines license in accordance with KRS Chapter 304. Agents who already hold a general lines agent license will have already met the requirements and will have no costs or savings.

2. Continued cost or savings: Those new agents who are appointed or sponsored by liability self-insurance groups shall obtain a general lines license and fulfill all the requirements of that license. For those agents who are already licensed, there will be no costs or savings.

3. Additional factors increasing or decreasing cost: None

b. Reporting and paperwork requirements: In order to obtain and maintain a license, the new agents appointed or sponsored by liability self-insurance groups will be required to meet all the requirements of a general lines license. Those agents already holding a general lines license will not have additional reporting or paperwork requirements. The liability self-insurance groups will be required to file the initial appointment of each agent. The liability self-insurance groups will also be required to file a listing of continuing appointments biennially.

Effects on the promulgating administrative body:

a. Direct and indirect costs or savings:

1. First year: The department will be required to administer any new licenses but should not incur any new cost or savings.

2. Continued cost or savings: None

3. Additional factors increasing or decreasing cost: None

b. Reporting and paperwork requirements: The promulgating administrative body will be required to keep records regarding the status of all agents' licenses.

Assessment of anticipated effect on state and local revenues: New agents who are not already licensed will be required to pay an initial examination and a licensing/appointment fee in addition to a biennial renewal fee. Liability self-insurance groups will pay an appointment fee for the appointment of any agent.

Assessment of alternative methods; reasons why alternatives were rejected: The Commissioner of Insurance is required to promulgate administrative regulations regarding the licensing of those agents who represent liability self-insurance groups. The Department of Insurance desires to treat all agents, including those appointed or sponsored by liability self-insurance groups, equally. Therefore, the Department of Insurance has no alternative but to require that all agents be licensed.

Statutes, regulations, or governmental policies which may conflict, overlap, or duplicate the proposed regulation: None.

TIERING: Tiering is not used since the proposed administrative regulation should apply to all liability self-insurance groups equally.

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

815 KAR 7:100. The Kentucky Building Code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: Pursuant to KRS 198B.040(7), the Kentucky Board of Housing, Buildings and Construction promulgated and adopted a uniform state building code establishing standards for construction of buildings in the state and set forth in administrative regulation 815 KAR 7:090, which will be repealed by this administrative regulation. This administrative regulation incorporates by reference the 1994 Kentucky Building Code and sets forth printing errors not previously noted, as well as includes certain recent amendments approved by the board.

Section 1. Adoption of Code. (1) The Kentucky Building Code/1994, Sixth Edition, as adopted by the Kentucky Board of Housing, Buildings and Construction, is hereby incorporated by reference except as amended in Sections 2 through 8 of this administrative regulation.

(2) The code is published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477.

(3) The code is updated by and available from the Kentucky Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4) A copy of the code book is available to be inspected at the Department of Housing, Buildings and Construction at the above address Monday through Friday between 8 a.m. to 4:30 p.m.

Section 2. Amendments to Chapter 1 of the 1994 Kentucky Building Code. (1) Section 104.1 shall be amended to read: "104.1 Building code official: Each local government shall employ or otherwise provide for a certified Level I code official, certified electrical inspector and other code enforcement personnel necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned to it by law."

(2) Section 105.1.3 shall be amended to read: "105.1.3 In churches: The local code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for all church buildings having a capacity of 400 or less persons and all church buildings having 6,000 square feet (558 m^2) or less of total floor area."

(3) Section 105.2.1 shall be amended to read: "105.2.1 Buildings classified as assembly occupancies having a capacity in excess of 100 persons, except church buildings having a capacity of 400 or less persons and church buildings having 6,000 square feet (558 m^2) or less of total floor area."

(4) Section 107.7 shall be amended to read: "107.7 Engineering details: The code official may require adequate details of structural,

mechanical and electrical work, including computations, stress diagrams and other essential technical data to be filed, including how the required structural and fire-resistance rating integrity shall be maintained, and where penetrations will be made for electrical, mechanical, plumbing and communication conduits, pipes, and systems. All engineering plans and computations shall bear the signature of the responsible design professional."

Section 3. Amendment to Chapter 9 of the 1994 Kentucky Building Code. Method 1 in section 923.1 shall be amended to read: "1. Approved central-station system in accordance with NFiPA 72 listed in Chapter 35;."

Section 4. Amendments to Chapter 10 of the 1994 Kentucky Building Code. (1) Delete the Exception from Section 1006.6 in its entirety because the section it references was previously deleted.

(2) Section 1022.2.5 shall be amended to read: "1022.2.5 Handrail grip size: All stairway handrails shall have a circular cross section with an outside diameter of at least one and one-quarter (1 1/14) inches (32 mm) and not greater than two (2) inches (51 mm). (See Exception 2 for accessible handrails). Exceptions:

1. Any other shape with a perimeter dimension of at least four (4) inches (100 mm), but not greater than six and one-quarter (6 1/4) inches (158 mm) with the largest cross-sectional dimension not exceeding two and one-quarter (2 1/4) inches (57 mm).

2. New handrails in facilities required to be accessible shall comply with Figure 39 of ADAAG."

Section 5. Amendments to Chapter 11 of the 1994 Kentucky Building Code. (1) Exception #3 under Section 1103.1 shall be amended to read: "3. Church buildings, single family dwellings and apartment complexes consisting of less than twenty-five (25) units."

(2) Exception #2 under Section 1104.2 shall be amended to read: "2. The exceptions listed in Section 4.1.3(5) of ADAAG."

(3) Section 1105.2 shall be amended to read: "1105.2 Multiple-family dwellings: Assigned parking spaces shall be provided in accordance with Section 13.3.2(4)(a) of ADAAG for apartments occupied by a resident with a disability."

(4) Section 1107.4.3 shall be amended to read: "1107.4.3 Minimum requirements for multiple-family dwellings: A required accessible dwelling unit shall be on an accessible route and shall have accessible elements and spaces complying with Sections 13.3.2 and 13.4 of ADAAG."

(5) Section 1107.4.5.1 shall be amended to read: "1107.4.5.1 Minimum number: When dwelling units are altered in an existing facility, one (1) in twenty-five (25), but not less than one (1), of the dwelling units altered shall comply with the requirements of Section 13.3 and 13.4 of ADAAG for each alteration until the number of accessible dwelling units in each facility equals the number of required to be accessible by Section 1107.4.2."

(6) Section 1109.2 shall be amended to read: "1109.2 Signs: Signs which designate permanent rooms and spaces shall comply with Sections 4.30.1; 4.30.4; 4.30.5 and 4.30.6 of ADAAG. Required accessible elements shall be identified by the International Symbol of Accessibility at the following locations:

1. Accessible parking spaces required by Section 1105.1.
2. Accessible passenger loading zones.
3. Accessible areas of refuge required by Section 1111.2.
4. Accessible toilet and bathing units.
5. Accessible entrances."

(7) Section 1109.2.1 shall be amended to read: "1109.2.1 Directional signage: Directional signage indicating the route to the nearest like accessible element shall be provided at the following locations: (See ADAAG Sections 4.30.1; 4.30.2; 4.30.3 and 4.30.5)."

(8) Section 1109.3 shall be amended to read: "1109.3 Visible alarms: Visible alarm-indicating appliances shall be provided in public and common areas of all buildings and areas of buildings housing the hearing impaired in accordance with Section 917.0 of this code and Section 4.28.3 of ADAAG."

(9) Section 1111.2 shall be amended to read: "1111.2 Area of rescue assistance: Areas of rescue assistance shall be provided as required by Section 4.1.3(9) of ADAAG."

Section 6. Amendments to Chapter 16 of the 1994 Kentucky Building Code. Amend Exception #5 of Section 1612.6 to read as follows: "5. Architectural, mechanical and electrical components and systems in buildings located in Risk Zone 1 as shown in Table 1612.1.3."

Section 7. Amendments to Chapter 28 of the 1994 Kentucky Building Code. (1) Section 2801.2 shall be amended to read: "2801.2 Mechanical code: All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Chapter 38."

(2) Section 2801.4 shall be amended to read: "2801.4 Unfired pressure vessels: All unfired pressure vessels shall meet the standards set forth in Section VIII of the 1989 edition of the ASME Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ASNI/ASME) BPV-VIII-1, as required by Kentucky boiler administrative regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Delete Section 2813.0, Superseding provisions for mechanical ventilation, from the 1994 Kentucky Building Code in its entirety.

Section 8. Amendments to Chapter 35 of the 1994 Kentucky Building Code. Amend Chapter 35 by inserting an additional reference to "Addendum 62A-1990" under "ASHRAE."

Section 9. 815 KAR 7:090 is hereby repealed.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: July 14, 1994
FILED WITH LRC: July 14, 1994 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, August 23, 1994, 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 August 18, 1994, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Contact Person: Judith G. Walden

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved because regulation only establishes acceptability and sets standards.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: (Note any affects upon competition) No competition; KBC is statewide code.

(b) Reporting and paperwork requirements: None to users of KBC.

(2) Effects on the promulgating administrative body: None to the agency because the regulation merely provides accepted standards in construction.

(a) Direct and indirect costs or savings: Cost of printing KBC but this is recouped by the sale of the code books.

1. First year:
2. Continuing costs or savings: Printing of revised or updated pages.
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(3) Assessment of anticipated effect on state and local revenue: No anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method of construction was rejected. Board of Housing adopts or amends material within limits defined.

(5) Identify any statute, rule, regulation or governmental policy which may be in conflict, overlapping or duplication: No known conflict.

(a) Necessity or proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? If yes, complete questions 2-4. Yes
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect a part of local government.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased not decreased by this administrative regulation.

CABINET FOR HUMAN RESOURCES
Office of Personnel and Budget

900 KAR 1:090. Health care reporting requirements.

RELATES TO: KRS 205.510 to 205.990, 1994 Ky. Acts ch. 512
STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: 1994 Ky. Acts ch. 512 specifies that the Cabinet for Human Resources and the Department for Medicaid Services shall implement various provisions of the Health Care Reform Act. The Act requires the cabinet to report quarterly to the General Assembly on the progress in implementation. This administrative regulation sets forth the procedure for meeting the reporting requirement. These sections relate to changes and improvements to the Medicaid Program and to increasing accessibility to health care services.

Section 1. Reporting Requirements. The Secretary of the Cabinet for Human Resources shall report the activities undertaken to implement the provisions contained in 1994 Ky. Acts ch. 512.

(1) The initial report shall be due on October 15, 1994 and subsequent reports due on the 15th day in the months of January, April and July.

(2) The report shall describe activities related to:

(a) Reducing unnecessary emergency room use by Medicaid recipients pursuant to 1994 Ky. Acts ch. 512;

(b) Instituting copayments in the Medicaid Program pursuant to 1994 Ky. Acts ch. 512;

(c) Reviewing and determining appropriate Medicaid reimbursement policies pursuant to 1994 Ky. Acts ch. 512;

(d) Preventing, detecting and investigating fraud and abuse in the Medicaid Program pursuant to 1994 Ky. Acts ch. 512;

(e) Reviewing innovative or experimental programs for the purpose of reducing costs for institutionalized populations pursuant to 1994 Ky. Acts ch. 512;

(f) Developing new managed care programs for medical assistance recipients pursuant to 1994 Ky. Acts ch. 512;

(g) Prohibiting or reducing sheltering of assets as a means of obtaining eligibility for the Medicaid Program pursuant to 1994 Ky. Acts ch. 512;

(h) Increasing third party collections pursuant to 1994 Ky. Acts ch. 512;

(i) Reviewing Medicaid reimbursement policies pursuant to 1994 Ky. Acts ch. 512;

(j) Increasing access to health care services pursuant to 1994 Ky. Acts ch. 512; and

(k) Developing enhanced technologies to effectively monitor use of Medicaid services pursuant to 1994 Ky. Acts ch. 512;

(3) Copies of the report shall be forwarded to the Executive Director of the Legislative Research Commission, the Interim Joint Committee on Health and Welfare, the Speaker of the House and the President of the Senate.

DEE MAYNARD, Executive Director
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify the agency in writing by August 17, 1994 five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation on or before the date for hearing. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Contact person: Dee Maynard

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation only sets out requirements for the cabinet to report to the General Assembly on progress related to Sections 72 to 83 of House Bill 250.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The cabinet will have a slight increase in additional reporting and paperwork requirements since the report is a new requirement and is required quarterly.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No significant costs or savings.

2. Continuing costs or savings: No significant costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Imposes additional reporting and paperwork requirements on the cabinet. The cabinet must report quarterly to the General Assembly on activities related to Sections 72 to 83 of House Bill 250.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative, this is a requirement of House Bill 250.

(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: Is tiering applied? No. The only agency affected by this regulation is the Cabinet for Human Resources which is required to make quarterly reports to the General Assembly regarding implementation of certain sections of House Bill 250.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 8:051. Repeal of 902 KAR 8:050.

RELATES TO: KRS 211.170(1),(2), 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194.050, 194.170, 211.170, 212.170, 1994 Acts ch. 336

NECESSITY AND FUNCTION: KRS 211.190, 212.170, and 212.870 requires the Cabinet to supervise the personnel functions of local health departments. House Bill 631 (1994 Acts ch. 336) amends KRS Chapter 211 by establishing the Local Health Department Employment Personnel Council. This administrative regulation repeals 902 KAR 8:050 because KRS Chapter 13A prohibits the promulgation of an administrative regulation that repeats or summarizes a statute.

Section 1. 902 KAR 8:050, Local Health Personnel Advisory Council, is hereby repealed.

RICE C. LEACH, M.D., Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: July 5, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for August 22, 1994 at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994 of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Administrative Law, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact Person: Robert Nelson

(1) Type and number of entities affected: 48 local health departments established under KRS Chapter 212, with the exception of Louisville-Jefferson, Lexington-Fayette County and Northern Kentucky Health Departments.

(a) Direct and indirect costs or savings to those affected: There are no direct or indirect costs to the health departments. House Bill 631 (1994 Acts ch. 336) effective July 15, 1994 establishes the Local Health Department Employment Personnel Employment Council and, describer, the responsibilities of the Cabinet in providing administrative support and establishing policies and procedures for the local health department personnel program. The repeal of 902 KAR 8:050 is necessary because KRS Chapter 13A prohibits repeating or summarizing legislation in administrative regulation.

1. First year: Same as (a).

2. Continuing costs or savings: Costs involved are already an integral part of the administrative agency.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Preparing minutes of council meetings, establishing personnel records for newly employed for local health department employees, and the costs of maintaining an existing automated personnel system by the administrative agency.

(2) Effects on the promulgating administrative body: No additional effects in administrative body as it is an ongoing activity with an incurred cost.

(a) Direct and indirect costs or savings:

1. First year: The regulation would not have any additional effects on the administrative body as this is an ongoing administrative activity.

2. Continuing costs or savings: Same as 2(1).

3. Additional factors increasing or decreasing costs: No additional factors in addition to normal compensation increases for staff assigned to activity.

(b) Reporting and paperwork requirements: No additional costs or savings.

(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The requirements of KRS Chapter !#a requires the repeal of 902 KAR 8:050.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict:

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

(6) Any additional information or comments:

TIERING: Is tiering applied? No. The regulation pertains to the function and this regulation would repeal an existing regulation 902

KAR 8:050.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety

902 KAR 10:150. Domestic septage disposal site approval procedures.

RELATES TO: KRS 211.970 to 211.982
STATUTORY AUTHORITY: KRS 211.980 and 211.090
NECESSITY AND FUNCTION: KRS 211.970 to 211.982 direct the Cabinet for Human Resources to promulgate administrative regulations relating to approval of domestic septage treatment, land application, and surface disposal sites. This administrative regulation sets forth the procedures for complying with KRS 211.970 to 211.982.

Section 1. Definitions. In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:

(1) "Certified Inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(2) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives commercial wastewater processes or individual wastewater processes and does not include grease removed from a grease trap at a restaurant or similar grease producing business.

(3) "Grease" means a substance that is composed of fats or oils of animal or vegetable origin and does not apply to mineral based oils or greases.

(4) "Land application" means:

(a) The spraying or spreading of domestic septage or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease onto the land surface;

(b) The injection of domestic septage below the land surface; or

(c) The incorporation of domestic septage into the soil.

(5) "Operator" means a person operating or owning a domestic septage disposal, treatment, or recycling site, including their authorized agents.

(6) "Restrictive horizon" means a soil horizon that is relatively impervious to the downward movement of water, grease, domestic septage, or mixture because of its cemented, compacted or structural condition.

(7) "Water table" means the zone of soil saturation by groundwater.

Section 2. Application for Site Evaluation. (1) Form DFS-345, "Application and Site Evaluation" (6/94), shall be submitted by the applicant to the local health department on any site that is to be used as a domestic septage disposal site. Form DFS-345, "Application and Site Evaluation", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. A farm that receives less than 2,000 gallons of domestic septage per year is not required to be permitted however the farm shall be registered with the local health department. The disposal area where domestic septage is to be applied shall meet the requirements in Section 4 of this administrative regulation.

(2) The following documents shall accompany the application:

(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U. S. Geological Survey Quadrangle topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:

1. Number of acres and site boundaries;
2. Structures and other facilities;
3. Proposed disposal area;
4. Setback distances for features on the site and adjacent to the site as listed in Section 4, Table 8, of this administrative regulation;
5. North and prevailing wind direction; and
6. Access roads and other features outside of the boundaries of the site that may have an impact on site approval.

(b) Proposed operations plan including:

1. Methods and equipment for application, treatment, recycling, or storage;
2. Land usage and the nitrogen requirement for the crop or vegetation;
3. Application rate;
4. Monitoring program for vector and pathogen reduction;
5. Endangered species impact statement, if applicable; and
6. Other information deemed necessary by the cabinet.

Section 3. Site Evaluation Fee. (1) An evaluation fee is required for the cost of conducting a site evaluation by the local health department. The site evaluation fee shall be:

(a) Fifty (50) dollars per proposed disposal site that contains five (5) acres or less;

(b) $100 per sites greater than five (5) acres but less than twenty-five (25) acres;

(c) $150 per sites greater than twenty-five (25) acres but less than fifty (50) acres;

(d) $200 per sites greater than fifty (50) acres but less than 100 acres; and

(e) $300 per sites greater than 100 acres,

(2) Fee shall be made payable to the local health department.

Section 4. Site Approval Procedures. (1) A certified inspector shall evaluate each proposed site based on the factors listed in Tables 1 through 8 of this section. An official site evaluation form shall be completed classifying each factor using the following rating method:

(a) An "A" rating means that the site is acceptable for that site factor.

(b) An "M" rating means the site factor is acceptable with modification or restriction to the site or disposal method.

1. M_1 - Upslope surface water diversion required.
2. M_2 - Shallow placement of domestic septage shall maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a water table or bedrock. Lined wetland cells, storage, or treatment facilities may be excluded from this requirement;
3. M_3 - Shallow placement of domestic septage shall be required to maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a restrictive horizon.
4. M_4 - Acceptable if a curtain drain is installed to lower the water table to a level of eighteen (18) inches below the domestic septage application.

(c) A "U" rating means the site factor is not acceptable. Reclamation site areas with "U" ratings may be acceptable for disposal sites if the disposal activity will not contaminate the groundwater or create a public health nuisance.

(2) Topography.

TABLE 1
SITE TOPOGRAPHY

DISPOSAL METHOD	SLOPE 0 TO 12%	SLOPES >12% TO 25%	SLOPES > 25% OR NONUNIFORM
SURFACE APPLICATION	A	U	U
SHALLOW INCORPORATION	A	U	U
DEEP INCORPORATION	A	M_1	U

(3) Landscape position.

TABLE 2
LANDSCAPE POSITION

DISPOSAL METHOD	FLAT OR CONVEX: RIDGETOP; NATURAL TERRACES; SHOULDER SLOPE; SIDESLOPE; FOOTSLOPES; TERRACES	CONCAVE: SHOULDER SLOPE; SIDESLOPE	CONCAVE: RIDGETOPS; TERRACES; FOOTSLOPES; TOESLOPES; SINKHOLES; KARST DEPRESSIONS; FLOODPLAINS
SURFACE APPLICATION	A	M_1	U
SHALLOW INCORPORATION	A	M_1	U
DEEP INCORPORATION	A	M_1	U

(4) Soil texture. Soil texture shall be classified as follows:

(a) Soil Group I. Sandy texture soils containing more than the seventy (70) percent sand-sized particles including the sand and loamy sand soil textural classes;

(b) Soil Group II. Coarse loamy texture soils containing more than thirty (30) percent clay-sized particles including sandy loam and loam soil texture classes;

(c) Soil Group III. Fine loamy soils containing less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles including sandy clay loam, silt loam, clay loam, and silty lay loam textural classes; and

(d) Soil Group IV. Clay texture soils containing forty (40) percent or more clay-sized particles including sandy clay, silty clay, and clay.

TABLE 3
SOIL TEXTURAL GROUP

DISPOSAL METHOD	SOIL TEXTURAL GROUP I	SOIL TEXTURAL GROUP II & III	SOIL TEXTURAL GROUP IV
SURFACE APPLICATION	U	A	A
SHALLOW INCORPORATION	U	A	A
DEEP INCORPORATION	U	A	A

(5) Depth to a restrictive horizon.

TABLE 4
DEPTH TO RESTRICTIVE HORIZON

DISPOSAL METHOD	RESTRICTIVE HORIZON < 18"	RESTRICTIVE HORIZON FROM 18" TO 24"	RESTRICTIVE HORIZON FROM 24" TO 42"	RESTRICTIVE HORIZON > 42"
SURFACE APPLICATION	U	A	A	A
SHALLOW INCORPORATION	U	M_3	M_3	A
DEEP INCORPORATION	U	U	M_3	A

(6) Depth to a water table.

TABLE 5
DEPTH TO WATER TABLE

DISPOSAL METHOD	WATER TABLE DEPTH < 18"	WATER TABLE DEPTH FROM 18" TO 24"	WATER TABLE DEPTH FROM 24" TO 42"	WATER TABLE DEPTH > 42"
SURFACE APPLICATION	$M_{2,4}$	A	A	A
SHALLOW INCORPORATION	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$
DEEP INCORPORATION	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$	$M_{2,4}$

(7) Soil depth.

TABLE 6
SOIL DEPTH

DISPOSAL METHOD	SOIL DEPTH <18"	SOIL DEPTH 18" TO 24"	SOIL DEPTH 24" TO 42"	SOIL DEPTH > 42"
SURFACE APPLICATION	U	A	A	A
SHALLOW INCORPORATION	U	M_2	M_2	M_2
DEEP INCORPORATION	U	U	M_2	M_2

(8) Available space. The disposal site area shall be a minimum of one (1) acre (43,560 sq. ft.) after application of the setback distance requirements.

TABLE 7
AVAILABLE SPACE

DISPOSAL METHOD	ONE YEAR DISPOSAL CAPACITY	LESS THAN ONE YEAR DISPOSAL CAPACITY
SURFACE APPLICATION	A	U
SHALLOW INCORPORATION	A	U
DEEP INCORPORATION	A	U

TABLE 8
MINIMUM SETBACK DISTANCES FOR DOMESTIC SEPTAGE DISPOSAL SITES

SITE FEATURES	SURFACE APPLICATION; EXPERIMENTAL DISPOSAL METHODS	SHALLOW INCORPORATION	DEEP INCORPORATION
POTABLE WATER SUPPLIES AND WELLS	500 FEET	300 FEET	300 FEET
LAKES, PONDS, STREAMS, INTERMITTENT WATER WAYS DOWNSLOPE	200 FEET	100 FEET	100 FEET
SINKHOLES, KARST, DEPRESSIONS	200 FEET	200 FEET	200 FEET
DWELLINGS, BUSINESS, BEACHES, PUBLIC GATHERINGS	600 FEET	500 FEET	300 FEET
PROPERTY LINE OR EASEMENTS	100 FEET	50 FEET	50 FEET
PUBLIC ROADS	200 FEET	200 FEET	100 FEET

(9) Backhoe pits or a soil probe truck shall be used to determine soil characteristics and as necessary, shall be randomly spaced and taken to a depth of forty-two (42) inches unless limited by site conditions. The applicant shall provide the backhoe or soil probe truck.

Section 5. Appeal Procedures. (1) A hearing shall be provided at the request of the applicant if a site has been disapproved.

(2) The request for a hearing shall be made in writing on Form DFS-212, "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(3) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(4) All parties shall have the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(5) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(6) The hearing officer shall have the authority to issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet. Service of process and proof of service shall comply with KRS 211.220.

(7) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS, II., Secretary

APPROVED BY AGENCY: June 17, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Adm. Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth W. Wade

(1) Type and number of entities affected: 250 septic tank servicing businesses, 120 county health departments, and estimated 120 disposal sites. (Disposal sites will be required to be permitted.)

(a) Direct and indirect costs or savings to those affected:

1. First year: Sliding fee schedule based upon the size of the disposal site.

2. Continuing costs or savings: Annual cost remain same based upon new sites selected for disposal and closing of older or nonusable existing disposal sites.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Will encourage competitive bidding for services provided. As methods for recycling or reuse are developed will decrease need for disposal sites.

(b) Reporting and paperwork requirements: Will require record-keeping of the local health department for approved disposal location records and site evaluation records.

(2) Effects on the promulgating administrative body: Additional printing costs of regulations, forms; training local health departments , and administrative monitoring of the program.

(a) Direct and indirect costs or savings:

1. First year: Indirect administrative costs for monitoring, training and providing technical assistance.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will remain the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: A no change alternative would have continued nonuniformity of requirements, discrepancy with other state agencies and would not ensure that disposal sites would not contaminate the groundwater or create a public health nuisance.

(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 does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

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. Reevaluating proposed domestic sewage disposal sites and for permitting these sites.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect local health department personnel.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to evaluating sites and permitting sites necessary for compliance with KRS 211.970 to 211.982.

4. How does this administrative regulation affect the local government or any service it provides. This proposed regulation will define the requirements for the approval of sites to be used as disposal sites for domestic septage, hearings, and administrative procedures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 503 has requirements for disposal of domestic septage.

2. State compliance standards. Relates to KRS 211.970 to 211.980.

3. Minimum or uniform standards contained in the federal mandate. Requires treatment of domestic septage prior to land disposal for vector control and pathogen reduction, limits areas for disposal. Sets requirements for sites to be approved for disposal of domestic septage.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. 40 CFR Part 503 does not require site evaluation for disposal of domestic septage.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The site evaluation will ensure that the groundwater will not be contaminated by the disposal of domestic septage and will help to eliminate public concern from nuisance complaints about the disposal of domestic septage by requiring setback distances from natural land features, roadways, houses, and public access would be limited to the disposal sites.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety

902 KAR 10:160. Domestic septage disposal site operation.

RELATES TO: KRS 211.970 to 211.982

STATUTORY AUTHORITY: KRS 211.980, 211.090

NECESSITY AND FUNCTION: KRS 211.970 to 211.982 direct the Cabinet for Human Resources to promulgate administrative regulations relating to conduct of business; approval of domestic septage treatment and disposal methods; approval of domestic septage treatment, land application, and surface disposal sites; inspection and administrative enforcement procedures; and any other matters deemed necessary to protect public health and the environment. This administrative regulation sets forth the procedures for complying with KRS 211.970 to 211.982.

Section 1. Definitions. In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:

1) "Certified inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(2) "Deep incorporation" means land application by subsurface injection, trench disposal, or a furrow-placement-cover operation.

(3) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives commercial wastewater processes or individual wastewater processes and does not include grease removed from a grease trap at a restaurant or similar grease producing business.

(4) "Grease" means a substance that is composed of fats or oils of animal or vegetable origin and does not apply to mineral based oils or greases.

(5) "Land application" means the spraying or spreading of domestic septage onto the land surface; the injection of domestic septage below the land surface; or the incorporation of domestic septage into the soil.

(6) "Operator" means a person owning, operating, or controlling a septic tank domestic septage servicing business or a person operating or owning a domestic septage disposal, treatment, or recycling site, including their employees or agents.

(7) "Shallow incorporation" means land application by surface spreading followed by plowing, disking, or harrowing.

Section 2. Application for Permit to Operate. (1) No person shall

construct or operate a site for domestic septage disposal or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease without having first obtained a permit from the cabinet. Nothing in this administrative regulation shall require a farm owner to be permitted as a disposal site if that farm receives less than 2,000 gallons of domestic septage per year. However, the farm shall be registered with the local health department and the disposal of domestic septage on the farm shall not contaminate the groundwater or surface water or create a public health nuisance.

(2) Form DFS-200, "Application for Permit to Operate" (8/88), shall be submitted to the local health department for the initial application. Form DFS-233 (10/87) "Application for Permit" shall be submitted to the local health department annually for permit renewal. Form DFS-234 (12/92) "Permit to Operate" shall be posted in a conspicuous place at the disposal site. Forms DFS-200, "Application for Permit to Operate"; DFS-233, "Application for Permit"; and DFS-234 (12/92), "Permit to Operate" are incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(3) The following documents shall accompany the application:

(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U.S. Geological Survey Quadrangle topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:

1. Number of acres and site boundaries;
2. Structures and other facilities;
3. Approved disposal area;
4. Setback distances of features on and adjacent to the site;
5. North and prevailing wind direction; and
6. Access roads and other features outside of the boundaries of the site.

(b) Proposed operations plan including:

1. Methods and equipment for application or storage;
2. Land usage and the nitrogen requirement for the crop or vegetation;
3. Application rate;
4. Pathogen reduction and vector control plan; and
5. Certification statement submitted with the permit application stating: "I certify, under penalty of law, that pathogen reduction and the vector attraction reduction requirements have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements have been met."

(4) A permit to operate shall be issued after the applicant meets the requirements of this administrative regulation.

(5) The permit shall expire March 1 of each year.

Section 3. Permit and Inspection Fees. (1) An annual permit fee of $150 is assessed for each permitted site to cover the costs of reviewing documentation and conducting inspections by the local health department.

(2) Fees shall be made payable to the local health department.

Section 4. Business Requirements. (1) The operator of a domestic septage disposal site shall:

(a) Refuse to accept any type of waste for which the site is not approved.

(b) Maintain the site, facilities, and equipment in a safe and sanitary condition.

(c) Direct and manage the unloading and application of domestic septage to the site during the hours of operation.

(d) Notify service vehicle operators if the site is closed during normal working hours.

(e) Notify the local health department immediately of any person who discharges prohibited waste.

(f) Submit a written closure plan to the local health department prior to thirty (30) days of closure.

(2) The owner of a disposal site shall:

(a) Provide written notification to the subsequent owner prior to the sale that the land was used as a domestic septage disposal site.

(b) Maintain a list of the vehicle license numbers, disposal method, location, and total number of gallons of domestic septage or domestic septage mixed with grease received, retain these records for five (5) years, and make these records available to the cabinet during normal business hours.

Section 5. Approved Methods of Domestic Septage Disposal. (1) Surface application and shallow incorporation.

(a) Equipment used for surface application shall have a spray bar, splash plate, or other device to evenly distribute the domestic septage while the equipment is in motion. The device shall be designed to direct the contents away from the vehicle and shall be rinsed prior to it leaving the site.

(b) The domestic septage shall be surface spread uniformly to prevent ponding.

(c) Domestic septage storage facilities shall be provided during periods of inclement weather.

(d) The site shall have a well-established and maintained sod covering or approved vegetation unless the domestic septage application is used to establish a vegetative cover in reclamation.

(e) Sufficient alkali shall be applied to each surface application of domestic septage or domestic septage mixed with grease to raise the pH to twelve (12) for thirty (30) minutes to control odor and vectors, unless previously added.

(f) Domestic septage on sites using shallow incorporation shall be incorporated into the soil within six (6) hours.

(g) Incorporation of domestic septage shall follow the contour of the site to minimize erosion and runoff.

(2) Deep incorporation.

(a) Deep incorporation of domestic septage shall follow the contour of the site to minimize soil erosion and runoff.

(b) If approved, trenches shall be a maximum of two (2) feet deep and two (2) to ten (10) feet wide. Actual configuration of the width and linear dimensions may be restricted by topography and soil conditions.

1. The excavated soil from the trench or bed shall be placed on the uphill side to control the movement of surface water into the trench or bed.
2. Sufficient alkali shall be spread over each application of domestic septage placed in a trench to control odor and vectors.
3. The trench shall be covered with a minimum of one (1) foot of soil when it reaches its holding capacity and has dewatered sufficiently.
4. Trenching of grease alone is prohibited.

Section 6. Experimental Disposal Methods. The following disposal methods shall be considered experimental and may require joint approval with the Natural Resources and Environmental Protection Cabinet:

(1) Lagoon pretreatment;
(2) Wetlands pretreatment;
(3) Lagoon/wetlands;
(4) In-vessel composting;
(5) Static pile composting;
(6) Windrow composting;
(7) Recycling; and
(8) Other proposed methods not specified by this administrative regulation.

Section 7. Disposal Restrictions. The following restrictions shall apply to all land disposal methods if alkali is not added to the domestic septage:

(1) Public access to the site is restricted for at least twelve (12) months.

(2) Grazing of animals whose products are consumed by humans is prohibited for one (1) month after application.

(3) If crops for direct human consumption are grown within eighteen (18) months of the last domestic septage application, and the edible portion of the crop is in contact with the domestic septage, any domestic septage applied to the land or incorporated into the soil shall be treated by a process to further reduce pathogens (PFRP) using one (1) the following technologies:

(a) Composting. Using the within-vessel composting method or the static aerated pile composting method, the temperature of the domestic septage is maintained at 131 degrees Fahrenheit or greater for three (3) days. Using the windrow composting method, the temperature of the domestic septage is maintained at 131 degrees Fahrenheit or greater for fifteen (15) days or longer. During the period when the compost is maintained at 131 degrees Fahrenheit or greater, there shall be a minimum of five (5) turnings of the windrow.

(b) Heat drying. Domestic septage is dried by direct or indirect contact with hot gases to reduce the moisture content of the domestic septage to ten (10) percent or lower. The temperature of the domestic septage particles exceeds 176 degrees Fahrenheit or the wet bulb temperature of the gas in contact with the domestic septage as the domestic septage leaves the dryer exceeds 176 degrees Fahrenheit.

(c) Heat treatment. Liquid domestic septage is heated to a temperature of 356 degrees Fahrenheit or greater for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid domestic septage is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the domestic septage is ten (10) days at 131 to 140 degrees Fahrenheit.

(e) Beta ray irradiation. Domestic septage is irradiated with beta rays from an accelerator at dosages of at least one (1.0) megarad at room temperature (ca. sixty-eight (68) degrees Fahrenheit).

(f) Gamma ray irradiation. Domestic septage is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature [ca. sixty-eight (68) degrees Fahrenheit].

(g) Pasteurization. The temperature of the domestic septage is maintained at 158 degrees Fahrenheit or greater for thirty (30) minutes or longer.

(h) Other methods or operating conditions may be acceptable if pathogens are reduced equivalent to any of the above add-on methods.

(4) The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using the following equation:

$$AAR = \frac{N}{0.0026}$$

Where:
AAR = Annual application rate in gallons per acre per 365-day period.
N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

Section 8. Domestic Septage Disposal Site Maintenance. (1) Sites shall be maintained prevent the creation of a public health hazard or degrading conditions to the environment.

(2) A plot plan shall be posted at the site showing the following information:

(a) Division of site by approved application methods; and

(b) Number of gallons of domestic septage applied.

(3) Access roads shall be maintained to minimize dust and rutting.

(4) Surface application shall not be applied during or immediately after inclement weather or a hard freeze.

(5) Warning signs, fencing, or barriers may be required to prevent unauthorized entry into the disposal area.

Section 9. Existing Domestic Septage Disposal Sites. (1) Domestic septage disposal sites existing prior to the effective date of this administrative regulation may continue to operate if the cabinet determines that the site and disposal methods do not create a health or safety hazard. The site owner shall obtain a permit to operate using Form DFS-200 as required in Section 2 of this administrative regulation within thirty (30) days of the effective date of this administrative regulation.

(2) Vehicles, tanks, equipment, and facilities in use at the disposal site prior to the effective date of this administrative regulation, which do not meet the design, construction, or material requirements of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition.

(3) Replacement of existing vehicles, tanks, equipment, and facilities shall meet the requirements of this administrative regulation. The owner shall notify the cabinet of any replacement.

Section 10. Inspection Procedures. (1) At least one (1) time every calendar year the cabinet shall inspect:

(a) Vehicles;

(b) Equipment;

(c) Domestic septage storage facilities used at the site; and

(d) The domestic septage disposal site.

(2) The cabinet shall have the right of access to inspect vehicles, equipment, domestic septage storage locations, and the domestic septage disposal sites during normal hours of operation. The right of access at all times shall not be denied in the event of a potential imminent health hazard.

(3) The findings shall be recorded on Form DFS-315, "Inspection Report" (11/92), and a copy of the inspection report shall be provided to the owner or operator. Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) If a violation is found, the inspection report shall:

(a) Set forth the specific violation;

(b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.982 and this administrative regulation may result in initiation of the enforcement proceedings in Section 11 of this administrative regulation and KRS 211.995.

Section 11. Administrative Enforcement Procedures. (1) A permit may be suspended or revoked upon evidence that the operator:

(a) Knowingly violates the provisions of KRS 211.970 to 211.980 or this administrative regulation;

(b) Accepts prohibited wastes;

(c) Practices fraud or deception in applying for a permit;

(d) Fails to pay required fees;

(e) Is incompetent to operate a domestic septage disposal site; or

(f) Interferes with the cabinet in the performance of its duties.

(2) A hearing shall be provided, after request by the operator, if:

(a) A permit is denied, suspended, or revoked; or

(b) An inspection indicates failure to comply with the requirements of KRS 211.970 to 211.982 or this administrative regulation.

(3) The request for a hearing shall be made in writing on Form DFS-212, "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) The cabinet shall notify the requesting party in writing of the:

(a) Name of the hearing officer; and
(b) Time and place of the hearing.
(5) All parties shall have the right to:
(a) Be represented by counsel;
(b) Present evidence on his behalf; and
(c) Cross-examine witnesses.
(6) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.
(7) The hearing officer shall have the authority to issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet. Service of process and proof of service shall comply with KRS 211.220.
(8) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.
(9) An injunction may be obtained by the cabinet or local health department if immediate action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.982 and this administrative regulation.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS, II., Secretary
APPROVED BY AGENCY: June 17, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Adm. Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth W. Wade
(1) Type and number of entities affected: 250 septic tank servicing businesses. 120 county health departments, estimated 120 disposal sites.
(a) Direct and indirect costs or savings to those affected:
1. First year: Cost of reviewing applications and conducting inspections $18,000.00 incurred by the local health departments, and $150 per permit by the site owner.
2. Continuing costs or savings: Annual cost remain same because of annual inspection requirements.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Will encourage competitive bidding for services provided.
(b) Reporting and paperwork requirements: Will require record-keeping by the domestic septage disposal site operator/owner to maintain disposal records for five years.
(2) Effects on the promulgating administrative body: Additional printing costs of regulations, forms; training local health departments and septic tank servicing business, site owner/operators, and administrative monitoring of the program.
(a) Direct and indirect costs or savings:
1. First year: Indirect administrative costs for monitoring, training and providing technical assistance.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Will remain the same.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: A no change alternative would have continued nonuniformity of requirements, discrepancy with other state agencies and would have been in noncompliance with federal mandates.
(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 does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

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. Relates to local health departments permitting and inspecting septic tank servicing businesses, and disposal site owner/operators.
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect local health department personnel.
3. State the aspect or service of local government to which this administrative regulation relates. Relates to licensing and permitting services necessary for compliance with KRS 211.970 to 211.982.
4. How does this administrative regulation affect the local government or any service it provides. This proposed regulation will define the requirements for the operation of domestic septage disposal operations, requirements for inspections, hearings, enforcement actions and administrative procedures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 503 has requirements for disposal of domestic septage.
2. State compliance standards. Relates to KRS 211.970 to 211.980.
3. Minimum or uniform standards contained in the federal mandate. Requires treatment of domestic septage prior to land disposal for vector control and pathogen reduction, limits areas for disposal and sets standards for approving and operating disposal sites for domestic septage.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. Sets standards and requirements for disposal sites to be permitted and inspected.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Sets standards and requirements for uniformity for approval and operation of domestic septage disposal sites to prevent contamination of groundwater and from creating a public health nuisance.

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Environmental Health and Community Safety

902 KAR 10:170. Septic tank servicing.

RELATES TO: KRS 211.970 to 211.982
STATUTORY AUTHORITY: KRS 211.980, 211.090
NECESSITY AND FUNCTION: KRS 211.970 to 211.982 direct the Cabinet for Human Resources to promulgate administrative regulations relating to vehicle tank and equipment requirements; conduct of business; inspection and administrative enforcement procedures, including suspension or revocation of licensing; injunctive

action; and any other matters deemed necessary to protect public health and the environment. This administrative regulation sets forth the procedures for complying with KRS 211.970 to 211.982.

Section 1. Definitions. In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:

(1) "Agricultural land" means land on which a food crop, feed crop, or fiber crop is grown such as range land, pasture land or farms.

(2) "Domestic septage" means liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives commercial wastewater processes or individual wastewater processes and does not include grease removed from a grease trap at a restaurant or similar grease producing business.

(3) "Domestic sewage" means waste and wastewater from humans or household operations that is discharged to, or otherwise enters a wastewater treatment works.

(4) "Grease" means a substance that is composed of fats or oils of animal or vegetable origin and does not apply to mineral based oils or greases.

(5) "Land with a high potential for public exposure" means land that the public uses frequently such as construction sites located in a city, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

(6) "Land with a low potential for public exposure" means land that the public infrequently uses or is in contact with such as agricultural land, forest, and a reclamation site located in an unpopulated area.

(7) "Operator" means a person owning, operating, or controlling a septic tank servicing business, including their employees or agents.

(8) "Pathogens" means disease-causing organisms such as certain bacteria, protozoa, viruses, and viable helminth ova.

(9) "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.

(10) "Reclamation site" means drastically disturbed land that is reclaimed using domestic septage such as strip mine and construction sites.

(11) "Vector attraction" means the characteristics of domestic septage that attract rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(12) "Surface disposal site" means an area of land that is used for domestic septage disposal.

Section 2. Conduct of Business. A septic tank service operator shall:

(1) Not dispose of domestic septage or domestic septage mixed with grease unless approved by the cabinet at a permitted site, treatment facility, or registered farm that receives less than 2,000 gallons of domestic septage per year.

(2) Register a farm that receives less than 2,000 gallons of domestic septage or domestic septage mixed with grease with the local health department.

(3) Not apply additional domestic septage or domestic septage mixed with grease to any disposal site if the annual application rate has been reached during a 365-day period.

(4) Verify in writing that the vector attraction reduction and pathogen reduction requirements have been met if disposing of domestic septage or domestic septage mixed with grease.

(5) Maintain setback distances from features as required in 902 KAR 10:150, Section 4 (8), Table 8.

(6) Not dispose of domestic septage or domestic septage mixed with grease during adverse weather or if the site is snow covered or frozen.

(7) Provide an adequate storage facility during adverse weather, wet site conditions, or if the disposal site is not accessible.

(8) Maintain written authorization from the land owner or facility operator to use the site to dispose of domestic septage or domestic septage mixed with grease. The authorization shall be maintained in each licensed vehicle and at the business office.

(9) Remove all domestic septage from the tank being serviced.

(10) Not use chemicals or biological cleaners, starters, or other agents as part of the service unless the material has been approved by the cabinet. An additive may be approved if it can be demonstrated that the product has a positive benefit and no adverse effect on the operation and performance of an on-site sewage disposal system.

(11) Re-cover access openings and leave the property in a safe and sanitary condition.

(12) Notify the owner of any damage to the sewage treatment or disposal system found during the servicing operation.

(13) Provide the customer an invoice containing the following minimum information:

(a) Customer's name;

(b) Location of service;

(c) Date of service;

(d) Amount of domestic septage and grease from grease traps removed in gallons;

(e) Vehicle license number;

(f) Name and address of servicing business;

(g) Printed and signed name of individual vehicle operator; and

(h) Name and location of approved disposal site, registered farm, landfill, or treatment facility.

(14) Retain copies of customer invoices and other records pertaining to the business operation for five (5) years and make available upon request by the cabinet during normal business hours.

(15) Maintain the following information if domestic septage or domestic septage mixed with grease has been applied to an approved site:

(a) Location by street address, descriptive location, or latitude and longitude of each site where domestic septage or domestic septage mixed with grease has been applied;

(b) The number of acres in each site;

(c) The date and time of application of the domestic septage or domestic septage mixed with grease;

(d) The nitrogen requirement for the crop or vegetation grown on the site during the 365-day period;

(e) Application rate, in gallons, per acre per 365-day period of domestic septage or domestic septage mixed with grease;

(f) The following certification statement: "I certify, under penalty of law, that the pathogen reduction and vector attraction reduction requirements have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

(g) A description of how the pathogen and vector attraction reduction requirements have been met; and

(h) Name and location of wastewater treatment facility or landfill used to dispose of the domestic septage or domestic septage mixed with grease.

(16) Submit plans and a statement of compliance with KRS 211.970 and this administrative regulation prior to transportation or disposal of domestic septage or domestic septage mixed with grease within the borders of the Commonwealth.

(17) Provide employees with necessary personal protective equipment suitable for the work being performed such as gloves, clothing, and respiratory masks.

Section 3. Grease Disposal. (1) Grease traps serviced at restaurants, residential, or institutional food preparation may be mixed

at a ratio of three (3) parts domestic septage to one (1) part grease and disposed at approved disposal sites.

(2) Grease alone may be discharged into a publicly owned wastewater treatment works that will accept grease pumpings.

(3) Grease may be dewatered and disposed at a landfill that will accept grease pumpings.

(4) Grease alone shall not be land applied.

Section 4. Vehicle, Tank, and Equipment Requirements. (1) All vehicles, tanks, and equipment used in the pumping, transporting, treatment, or disposal of domestic septage or grease traps shall be maintained in safe and sanitary condition.

(2) Tanks used in the pumping or transporting of domestic septage shall meet the following additional requirements:

(a) Tanks shall be leak-proof, constructed of, or coated with, a corrosion resistant material, and securely attached to the vehicle chassis;

(b) Discharge openings shall be constructed so the tank completely drains and the discharge stream is not obstructed by any part of the vehicle or equipment, except for splash plates, spray bars, or similar devices; and

(c) Valves at the tank inlet and outlet shall be water-tight and fitted with caps or plugs for use during transport or storage.

(3) Pumps, valves, and hoses shall be maintained to prevent leakage and meet the following requirements:

(a) Pumps shall be self-priming;

(b) Pump shall be maintained to prevent backflow;

(c) Connections or openings shall be water-tight and fitted with caps or plugs if the pumping system is not in use;

(d) Pulleys, chains, belts, or flexible shafts shall have guards to prevent injury; and

(e) Hoses shall have leak-proof connectors, caps, or plugs unless stored in leak-proof compartments.

Section 5. Existing Vehicles, Tanks, and Equipment. (1) Any vehicle, tank, or equipment in use prior to the effective date of this administrative regulation, which does not meet the design, construction, or material requirements in Section 3 of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition as determined by the cabinet.

(2) Replacement of existing vehicles, tanks, and equipment after the effective date of this administrative regulation shall meet the requirements of this administrative regulation.

Section 6. Inspection Procedures. (1) At least one (1) time every calendar year the cabinet shall inspect:

(a) Vehicles;

(b) Equipment; and

(c) The domestic septage storage location.

(2) The cabinet shall have the right of access to inspect vehicles, equipment, and domestic septage storage locations during normal hours of operation. The right of access shall not be denied in the event of an imminent health hazard.

(3) The findings shall be recorded on Form DFS-315, "Inspection Report" (9/93), and a copy of the inspection report shall be provided to the owner or operator. Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) If a violation is found, the inspection report shall:

(a) Set forth the specific violation;

(b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.982 and this administrative regulation may result in initiation of the enforcement proceedings in Section 7 of this administrative regulation and KRS 211.995.

Section 7. Administrative Enforcement Procedures. (1) A license may be suspended or revoked upon if the operator:

(a) Knowingly violates the provisions of KRS 211.970 to 211.980 or this administrative regulation;

(b) Practices fraud or deception in applying for a license;

(c) Fails to pay required fees or maintain bonding requirements;

(d) Interferes with the cabinet in the performance of its duties.

(2) A hearing shall be provided, after request by the operator, if:

(a) A license is denied, suspended, or revoked; or

(b) An inspection indicates repeated violations or failure to comply with the requirements of KRS 211.970 to 211.982 or this administrative regulation.

(3) The request for a hearing shall be made in writing on Form DFS-212, "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) The cabinet shall notify the requesting party in writing:

(a) Name of the hearing officer; and

(b) Time and place of the hearing.

(5) All parties shall have the right to:

(a) Be represented by counsel;

(b) Present evidence on his behalf; and

(c) Cross-examine witnesses.

(6) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.

(7) The hearing officer shall have the authority to issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the cabinet. Service of process and proof of service shall be made pursuant to KRS 211.220.

(8) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.

(9) An injunction may be obtained by the cabinet or local health department if immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.982 or this administrative regulation.

RICE C. LEACH, M.D., Commissioner
MASTEN CHILDERS, II., Secretary

APPROVED BY AGENCY: June 17, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Adm. Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, KY 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kenneth W. Wade

(1) Type and number of entities affected: 250 septic tank servicing businesses, 120 county health departments.

(a) Direct and indirect costs or savings to those affected:

1. First year: Minimal increase in overhead costs for septic servicing business for costs of alkali, recordkeeping requirements.

2. Continuing costs or savings: Annual cost remain same because of annual inspection, material costs, and recordkeeping requirements.

3. Additional factors increasing or decreasing costs (note any

effects upon competition): Will encourage competitive bidding for services provided.

(b) Reporting and paperwork requirements: Will require record-keeping by the septic tank servicing business, customer invoices, and disposal location records for five years.

(2) Effects on the promulgating administrative body: Additional printing costs of regulations, forms; training local health departments and septic tank servicing business, and administrative monitoring of the program.

(a) Direct and indirect costs or savings:

1. First year: Indirect administrative costs for monitoring, training and providing technical assistance.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will remain the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: A no change alternative would have continued nonuniformity of requirements, discrepancy with other state agencies and would have been in noncompliance with federal mandates.

(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 does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

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. Relates to local health departments permitting and inspecting septic tank servicing businesses.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect local health department personnel.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to licensing and permitting services necessary for compliance with KRS 211.970 to 211.982.

4. How does this administrative regulation affect the local government or any service it provides. This proposed regulation will define the requirements for the operation of septic tank servicing businesses, requirements for inspections, hearings, enforcement actions and administrative procedures.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 503 has requirements for disposal of domestic septage.

2. State compliance standards. Relates to KRS 211.970 to 211.980.

3. Minimum or uniform standards contained in the federal mandate. Requires treatment of domestic septage prior to land disposal for vector control and pathogen reduction, limits areas for disposal.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Health Services
Division of Maternal and Child Health

902 KAR 115:010. Water fluoridation for the protection of dental health.

RELATES TO: KRS Chapter 211

STATUTORY AUTHORITY: KRS 211.190, 211.190(10)

NECESSITY AND FUNCTION: KRS 211.190(10) directs the Cabinet for Human Resources to provide public health services that include water fluoridation programs for the protection of dental health. This administrative regulation sets forth the requirements for the programs.

Section 1. Community Implementation. (1) All community water systems serving a population of 3,000 or more, including consecutive supplies, shall adjust fluoride deficient waters to protect the dental health of the people served by the supply. For the purposes of this administrative regulation, consecutive supply shall mean a supply that purchases its water from another public water system. The population served by a community water system shall include its own population, as well as the population served by all of its consecutive supplies.

(2) Community water systems serving a population between 1,500 and 3,000 shall provide supplemental fluoridation only if adequate fluoride feed equipment is available from the Cabinet for Human Resources, Department for Health Services.

(3) Although not required to provide supplemental fluoridation, community water systems serving a population of less than 1,500 that choose to provide supplemental fluoridation shall do so only if adequate fluoride feed equipment is available from the Cabinet for Human Resources, Department for Health Services, and there are competently trained or certified personnel at the community water system.

Section 2. Approval. All community water systems shall obtain the written approval of the Cabinet for Human Resources before adding fluorides to a public water system. Approval by the cabinet shall be contingent upon the presentation of evidence satisfactory to the cabinet that the plant facilities and operation will provide for adequate control and supervision, safe operation and maintenance, the keeping of operational records, and compliance with this regulation and 401 KAR Chapter 8:010 through 8:700 relating to public water systems.

Section 3. Equipment, Facilities, and Services. The equipment, facilities, and services shall meet the requirements set forth below:

(1) Feeding. Reliable feeding equipment with an accuracy within five (5) percent shall be provided to feed the proper dosage of fluoride. The rate of feed shall be in a manner that will give a fluoride content between eight-tenths (0.8) ppm and one and four-tenths (1.4) ppm in the treated water. Based on an evaluation of Kentucky climatological information, a fluoride concentration of no less than nine-tenths (0.9) ppm is recommended in the finished water. The point of application shall be selected so that fluoride will be evenly mixed with the water leaving the treatment plant.

(2) Method of measurement.

(a) Saturator tanks. If solution feed equipment is to be used, the water plant shall have a corrosion-resistant solution tank, and an accurate means for weighing the stock chemical (fluoride) available. A metering device for measuring the water for the solution shall also be provided.

(b) Dry feed hoppers. Dry feed hoppers shall be mounted on scales.

(c) Acid systems (H_2SiF_6). Scales shall be available to measure the weight loss each day or some other appropriate method of measuring the amount of acid being used each day.

(3) Protection of operator. Special precautions shall be taken to

protect the operators. Precautions may vary with the type of installation, but, at a minimum, should include an approved respirator or approved rubber gloves, eye shield, and apron as indicated by the type of fluoride being used (dry or liquid). An adequate exhaust or ventilation system shall be provided for all fluoride feeding equipment.

(4) Storage. Separate storage areas shall be provided for all fluoride chemicals.

(5) Laboratory facilities. Laboratory facilities shall be provided for the determination of the fluoride content of the water by competent personnel in accordance with the procedures outlined by the Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992). The Standard Methods for the Examination of Water and Wastewater, 18th Edition (1992), is jointly prepared and published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, and is incorporated by reference. This publication may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, or may be obtained by contacting the Publication Office, American Public Health Association, 1015 15th Street NW, Washington, D.C. 20005.

(6) Samples. Raw water and plant tap water samples shall be examined at least once per day and the results shall be included on the standard monthly operation report submitted to the cabinet. Additional finished water samples shall be analyzed by a laboratory certified by the Cabinet for Natural Resources and Environmental Protection in accordance with 401 KAR 8:040 for fluoride determination, with the results being forwarded to the cabinet. This sampling shall be at a rate of two (2) samples per month. The first sample shall be collected from the plant tap during the first week of the month and the second sample collected from the distribution system, at a point of maximum retention, during the third week of the month. Evaluation of the results of these analyses shall be within the province of the cabinet.

(7) Siphon breakers. Fluoride feeders shall be equipped with siphon breakers to prevent back siphonage of concentrated fluoride solution into the distribution system.

(8) Notification of cabinet when fluoride begins. The cabinet shall be notified of the date on which fluoridation is to commence in order that a representative of the cabinet may be present to calibrate and check the fluoridation equipment and instruct the operating personnel concerning tests, records, operation, and safety precautions.

(9) Notice when fluoride is interrupted. The owner or operator of the water plant shall immediately notify the cabinet of any interruption to the addition of fluoride to the water supply.

Section 4. Procedure for Obtaining Approval. A system shall submit, in support of an application for approval, the following:

(1) Detailed plans showing the method and point of application of fluoride and storage facilities for stock chemicals;

(2) Information concerning technical supervision of the treatment process; and

(3) Provisions for laboratory facilities.

RICE C. LEACH, Commissioner
MASTEN CHILDERS, II, Secretary

APPROVED BY AGENCY: June 13, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 22, 1994, at 9 a.m. in the Vital Statistics Conference Room located on the first floor of the CHR Building. However, this hearing will be canceled unless interested persons notify the following office in writing by August 17, 1994, of their desire to appear and testify at the hearing: William K. Moore, Deputy Counsel for Adm. Law, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dr. Robert Fowler

(1) Type and number of entities affected: 215 community water system operators.

(a) Direct and indirect costs or savings to those affected:

1. First year: $19,500

2. Continuing costs or savings: Annual xost $9,000. Increased travel by five (5) field staff, increased usage of fluoride analysis forms.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Will require record-keeping and reporting by the water plant operators and maintenance of Fluoride Analysis Reports for 5 years by Dental Health Program.

(2) Effects on the promulgating administrative body: Additional printing costs of regulations, Fluoride Analysis Report forms, and administrative monitoring of the program.

(a) Direct and indirect costs or savings:

1. First year: Direct administrative costs for monitoring, plus initial one time costs for forms and water analysis kits of $19,500.

2. Continuing costs or savings: $9,000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Will remain the same.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(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 does not apply because it does not create disproportional impact on a part, class, or division of the regulated entity.

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. Relates to the operation of community water system fluoridation units.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Will only affect a part of the local government.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to fluoridation of community water systems necessary for compliance with KRS 211.190 and KRS 211.190 (10).

4. How does this administrative regulation affect the local government or any service it provides. This proposed regulation will define the requirements for the operation of community water system fluoridation equipment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. Relates to KRS 211.190.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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

903 KAR 5:392. Claimant profiling.

RELATES TO: KRS 194.030(9), 341.350(2)
STATUTORY AUTHORITY: KRS 13A.100, 194.050, 341.115, 341.125, 341.980
NECESSITY AND FUNCTION: 42 USC 503(a)(10) and 42 USC 503(j) require states to establish profiling systems to identify unemployment claimants who would be likely to exhaust regular benefits for referral to reemployment services, and to hold claimants ineligible to receive unemployment benefits if they fail to participate in reemployment services after having been so identified. KRS 341.350(2) was amended by the 1994 General Assembly to conform to this requirement, and made the Secretary of the Cabinet for Human Resources responsible for establishing a profiling system. The purpose of this administrative regulation is to prescribe conditions, consistent with the provisions of 42 USC 503(a)(10), which enable a claimant to be treated as having satisfied the requirement to participate in reemployment services as a condition of receiving benefits.

Section 1. Any claimant who, pursuant to KRS 341.350(2) is required to participate in reemployment services, such as job search assistance services, as a condition of receiving unemployment insurance benefits, shall be deemed to have satisfied this requirement if:

(1) The claimant has completed the services to which he is referred; or

(2) There is justifiable cause for the claimant's failure to participate in the services. For the purpose of this administrative regulation, "justifiable cause" shall be interpreted to mean what a reasonable person would do in like circumstances.

TREVA B. WRIGHT-DONNELL, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: July 11, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994, at 9 a.m. at the Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the contact person in writing by August 17, 1994, 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 the contact person.
CONTACT PERSON: William K. Moore, Deputy Counsel, Department of Law, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Contact person: Treva B. Wright-Donnell
(1) Type and number of entities affected: A small but indeterminate number of claimants who would otherwise not be allowed to draw benefits.
(a) Direct and indirect costs or savings to those affected:
1. First year: Indeterminable
2. Continuing costs or savings: Indeterminable
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: 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: None - required for compliance to federal law.
(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: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This regulation is necessary to be in compliance with the Social Security Act which provides exemption for claimants who have satisfied the requirements or have "justifiable cause" for exemption under profiling.
TIERING: Is tiering applied? No. All claimants will be treated the same.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development

904 KAR 2:361. Repeal of 904 KAR 2:360.

RELATES TO: 45 CFR 256, 45 CFR 257
STATUTORY AUTHORITY: KRS 194.050, 45 CFR 205.100
NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Transitional and At-risk Child Care Programs. The administrative regulation 904 KAR 2:360, Transitional and at-risk child care, set forth the technical and financial requirements of these child care programs. The Department for Social Services has assumed responsibility for the Transitional and At-risk Child Care Programs. This is as a result of the single state agency being changed from the Department for Social Insurance to the Cabinet for Human Resources. Information contained in 904 KAR 2:360, Sections 2 and 3, has been relocated to 905 KAR 2:140, Child day care programs. The definition for "at-risk" has also been relocated to 905 KAR 2:140. Since the body of information contained in this administrative regulation has now been incorporated into another administrative regulation in another department, 904 KAR 2:360, Transitional and at-risk child care, is no longer necessary.

Section 1. 904 KAR 2:360, Transitional and at-risk child care, is hereby repealed.

JOHN CLAYTON, Commissioner
MASTEN CHILDERS II, Secretary
APPROVED BY AGENCY: June 30, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994, 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: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Truett DeMoisey, Director

(1) Type and number of entities affected: None. Eligibility provisions will remain the same. The only change is in administration of transitional and at-risk child care.

(a) Direct and indirect cost or savings to those affected: None

1. First Year: None

2. Continuing Cost or Savings: None

3. Additional factors increasing or decreasing cost (Note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The scope of work will change from the Department for Social Insurance (DSI) to the Department for Social Services(DSS). Currently, the two agencies work together through an interagency agreement. Most of the responsibilities will shift from DSI to DSS. The interagency agreement will be initiated by DSS rather than DSI. In addition, administrative regulations and part of the Supportive Services State Plan will become the responsibility of DSS. As a result of this change, the information included in 904 KAR 2:360 will be incorporated into the DSS administrative regulation 905 KAR 2:140, Child day care programs.

(a) Direct and indirect cost or savings: See below.

1. First Year: No cost or savings will be seen in SFY 1994 as the money that is budgeted for TCC and at-risk will continue to be handled by the Department for Social Insurance. This is due in large part to the new cash management system that prevents the transfer of funds by the implementation date of this change.

2. Continuing cost or savings: Beginning in SFY 1995, the Department for Social Services will be responsible for obtaining and maintaining the funding for the Transitional and at-risk Child Care Programs. We estimate that administrative and benefit funds for the TCC and at-risk programs in SFY 1995 will be approximately $9,820,000. This estimate is based on the SFY 1994 projected amounts. We have taken into consideration the possibility of TCC funds increasing by about 3%. At-risk funds should remain the same since it is a "capped" grant.

3. Additional factors increasing or decreasing costs: None at this time.

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: None

Tiering: Was tiering applied? No. Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with Federal regulations at 45 CFR 233.10(a)(1).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the Federal mandate. 45 CFR 205.100, 45 CFR 256, 45 CFR 257

2. State compliance standards. This administrative regulation repeals the administrative regulation governing the eligibility for the Transitional and At-risk Child Care Programs. The Department for Social Services has assumed responsibility for these programs.

3. Minimum or uniform standards contained in the Federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the Federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. This administrative regulation will not impose any stricter requirements or any additional or different responsibilities than those required by the federal mandate.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 2:140. Child day care programs.

RELATES TO: KRS 199.892 - 896, 45 CFR 98, 256, 257, PL 99-457 Part H, PL 94-142.2

STATUTORY AUTHORITY: KRS 194.050, 199.892

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. This administrative regulation is necessary to enable the Cabinet for Human Resources to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Block Grant and the Transitional and At-risk Child Care Programs. The function of this administrative regulation is to establish procedures for the implementation of child day care programs.

Section 1. Definitions. (1) "At-risk child care (ARCC)" means child care assistance provided to non-AFDC families who need care in order to work and who may otherwise be at risk of becoming dependent upon AFDC.

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if postsecondary, consistent with employment goals.

(3) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(4) "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(5) "Child care and development block grant (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services for a low income family to work or attend training or educational programs.

(6) "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates or reflects some indication of child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(7) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(8) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(9) "Dedicated child care workers (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: Social Services Block Grant,(SSBG), Child Care and Development Block Grant (CCDBG), At-risk Child Care (ARCC), and Transitional Child Care (TCC).

(10) "Dependent care disregard" means a method of providing child care for AFDC and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the AFDC recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one (1) program, the highest disregard shall be used.

(11) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(12) "Employment" means public or private, full or part time, permanent or temporary work, including self-employment.

(13) "Family" means one (1) or more adults and children related by blood or law, including stepparents, residing in the same residence.

(14) "Licensed child day care facility" means a facility as governed by KRS 199.894.

(15) "Physical or mental incapacity" means a child under the age of eighteen (18) who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(16) "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(17) "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed day care facility, certified family child care home, unregulated home or registered home.

(18) "Purchase of care" means the purchase of child day care services from licensed facilities, certified registered homes or other eligible provider for authorized children to the extent funds are available.

(19) "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the Child Care and Development Block Grant (CCDBG) or At-risk Program (ARCC).

(20) "Relative" means for registration purposes:

(a) Grandparents, aunts and uncles who are required to register with the Department for Social Services before being eligible to receive payment for child care under CCDBG; and

(b) Relatives of the child by blood or marriage, eighteen (18) years or older, including grandfather, grandmother, brother, sister uncle, aunt, nephew, niece or first cousin, including half-blood and preceding generations, who are not required to register with the Department for Social Services to be eligible to receive payment for child care under ARCC.

(21) "Social services block grant (SSBG)" means child care assistance provided by licensed or certified providers for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(22) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or PL 94-142.2.

(23) "Transitional child care (TCC)" means child care assistance provided to families whose eligibility for AFDC has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on AFDC. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(24) "Type I day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(25) "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7), but not more than twelve (12) children. The provider's own preschool children shall be included in the number for which the home is licensed.

(26) "Unregulated provider" means a child care provider who is not subject to be licensed, certified or registered by the state or federal government. Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.

(27) "Waiting list" means a list that may be maintained by district DSS staff once funds are obligated in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(28) "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

Section 2. Technical Eligibility for CCDBG. A child shall be eligible for services as verified on the DSS-1A, Application for Services, herein incorporated by reference, if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional; or
4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; and

(c) To the extent necessary the eligibility levels of state median income specified in paragraph (a) and (b) of this subsection may be revised based on the availability of state and federal funds.

(3) Resides with parents who are working or attending a job training or educational program;

(4) Fee requirement.

(a) A family receiving CCDBG funds shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(5) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3(1) through (5) and 5(4) of this administrative regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;

3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 4 of administrative regulation; or

(c) Violate provisions of Section 5(4) of this administrative regulation.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The case records shall:

(a) Substantiate or reflect some indication of child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(3) Working parents may be eligible if:

(a) Child care needs exist in order to allow the parent to work;

(b) The family is income eligible as specified in Section 2(2)(a) and (b) of this administrative regulation; and

(c) ARCC and CCDBG funds are obligated.

Section 4. Technical Eligibility and Limitations for TCC. A family shall be notified of its potential eligibility for TCC when its AFDC benefits are terminated.

(1) The following requirements shall be met during any month for which TCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) of this administrative regulation or would be a dependent child except for the receipt of benefits under Supplemental Security Income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(b) Child care shall be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments shall not be made for care provided by:

1. Parents;
2. Legal guardians;
3. Members of the assistance group; and
4. Providers not meeting applicable standards of state and local law.

(d) The family shall have ceased to be eligible for AFDC as a result of:

1. Increased hours of, or increased income from, employment; or
2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;

(e). The family shall have received AFDC:

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and
2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f). The family:

1. Requests TCC benefits;
2. Provides the information necessary for determining eligibility and fees; and
3. Meets application requirements.

(2) Time limitations.

(a) Eligibility for TCC:

1. Begins with the first month that the family is ineligible for AFDC; and
2. Continues for a period of twelve (12) consecutive months.

(b) A family may begin to receive child care in any month during the twelve (12) month eligibility period.

(3) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment, unless good cause exists as follows:

1. The individual:

a. Is personally providing care for a child under age six (6); and

b. Employment will require the individual to work more than twenty (20) hours per week.

2. Child care:

a. Is necessary for the individual to participate in the program or accept employment; and

b. Is not available; or

c. The available child care does not meet the special needs of the child, e.g., physically or mentally disabled child.

3. The individual is unable to engage in employment or training for mental or physical reasons, including participation in a drug or alcohol rehabilitation program.

4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.

5. Travel time to work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant at home.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex color, disability, religious beliefs, national origin or political beliefs.

9. Work demand or conditions that render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The work presents a risk to the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

12. Employment would result in a net loss of cash income.

13. The client experiences a household emergency, including but not limited to: death of a member of the immediate family, entry into a spouse abuse center, or a natural disaster.

(b) Fails to cooperate with the State IV-A agency in establishing payment and enforcing child support obligations, per 904 KAR 2:006, Section 16.

(4) Fee requirements.

(a) A family receiving TCC shall be required to contribute toward the payment based on the family's income as described in Section 5(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 5. Technical Eligibility and Limitations for ARCC. (1) The following requirements shall be met during any month for which ARCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) and (2)(a) and (b) of this administrative regulation.

(b) The family:

1. Is at risk of becoming eligible for AFDC;
2. Is not receiving AFDC; and
3. Needs child care in order to accept employment and remain employed.

(2) Child care limitations:

(a) Child care payments shall be provided:

1. Directly to the provider;
2. In an amount equal to the actual cost up to the payment maximum based on market rates described in Section 7(2) of this administrative regulation; or
3. In an amount equal to the difference between paragraph (b) of this subsection and the amount allowed as a deduction for child care costs to recipients of statutory benefits; and
4. If child care arrangements would otherwise be lost:

a. For up to two (2) weeks prior to the start of employment; or

b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;
2. The legal guardian;
3. Not meeting applicable standards of state and local law;
4. Not registered by the department as required in Section 5 of this administrative regulation; or
5. Not allowing parental access.

(3) Fee requirements.

(a) A family receiving ARCC shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 6. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;
2. Be of value commensurate with the value of child care services provided in paragraph (a) of this subsection;
3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;
4. Not be considered a contract or grant to the provider but assistance to the parent;
5. Allow parents to chose from a variety of child care categories in compliance with federal regulations governing child day care programs including:
   a. Licensed child care facilities;
   b. Certified family child care facilities (CFCCH);
   c. Unregulated child care facilities; or
   d. Registered child care facilities; and
6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 7. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 shall be registered with the cabinet prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under ARCC; and

(c) Under CCDBG, nonrelative providers registered with the cabinet shall become certified as governed by 905 KAR 2:100.

(d) Nonrelative providers providing care in the child's home shall be certified by meeting the requirements as follows:

1. The provider shall be at least eighteen (18) years of age;
2. The provider shall be physically capable of providing care to children, as stated by a qualified physician;
3. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;
4. The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police; and
5. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care.

(2) The cabinet has established maximum child day care payments as follows:

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or
2. An AFDC, medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in this subsection and monitor the payment to the child care provider. If the parent fails to pay the fee the DCW shall develop a plan with the parent to pay the fee.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and
2. Upon receipt of reported changes.

(4) The Cabinet for Human Resources may, except for TCC and protective service cases, establish priorities for child care services as follows:

(a) Children with special needs;

(b) Job Opportunity and Basic Skills Program or TCC participants who have children ineligible for child care payments under the programs;

(c) Families who lose eligibility in another child care program; and

(d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following case terminations to the local DSI, Division of Field Services Office:

1. When a TCC client quits a job without good cause;
2. Based on a TCC client's failure to pay a parent fee;
3. Based on a TCC client's refusal to cooperate with the Division of Child Support Enforcement; and
4. Client makes suitable arrangements to pay parent fee.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;
2. A child left the home;
3. Payments cease for a child;
4. Client's address changes;
5. An absent parent returns to the home;
6. A TCC case is terminated; or
7. A child is added to the case.

(6) Recoupment. The following provisions apply to overpayment in SSBG, CCDBG, TCC and ARCC;

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;
2. Involving a current recipient; and
3. In which the overpayment would equal or exceed the cost of

recovery.

(b) An overpayment shall be recovered from the child care provider.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(e) For TCC cases an overpayment, including assistance paid pending a hearing decision, shall be recovered from:

1. The responsible party;

2. The family unit which was overpaid;

3. The provider who was responsible for the overpayment;

4. Individuals who were members of the family when overpaid; or

5. A family that includes a member of a previously overpaid family.

(7) The DCW shall terminate day care services when due to need or income criteria, clients lose eligibility.

(a) If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;

2. Send written notices explaining new eligibility criteria with a notice of intended action.

(b) TCC clients may lose eligibility during the entitlement period without causing permanent termination of benefits if:

1. The client fails to cooperate in paying the parent fee, but later makes suitable arrangements;

2. The client moves out of state and returns to Kentucky within the entitlement period; and

3. The child requiring paid care leaves the home and returns.

(c) AFDC unemployed parent cases continue to be eligible for TCC without a deprivation.

(8) The child care worker shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair hearing.

Section 8. Material Incorporated by Reference. (1) Forms necessary for the implementation of child day care services are herein incorporated by reference.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MASTEN CHILDERS II, Secretary
PEGGY WALLACE, Commissioner

APPROVED BY AGENCY: July 7, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1994, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 17, 1994: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are the 386 certified and 1800 licensed facilities providing care for approximately 12,000 children who are receiving subsidized payments for child care services. Another affected entity is the parents of the children receiving subsidized care.

(a) Direct and indirect costs or savings to those affected: Direct and indirect costs or savings to those affected is the increase in the parental fees charged for subsidized care to reflect the revised state median income based on the 1990 census data. Another indirect cost may be in the provision that allows for the termination of agreements if the Department for Social Services determines that circumstances or conditions at the provider's day care center place the child subject to the agreement at risk of abuse, neglect or exploitation. An indirect savings to the clients may be in the provision of expedited services with the Department of Social Services assuming administration of the Transitional and At-risk Child Care Programs.

1. First Year: Direct and indirect first year costs or savings to those affected is the increase in the parental fees charged for subsidized care to reflect the revised state median income based on the 1990 census data. Another indirect cost may be in the provision that allows for the termination of agreements if the Department for Social Services determines that circumstances or conditions at the provider's day care center place the child subject to the agreement at risk of abuse, neglect or exploitation. An indirect savings to the clients may be in the provision of expedited services with the Department of Social Services assuming administration of the Transitional and At-risk Child Care Programs.

2. Continuing costs or savings: Direct and indirect continuing costs or savings to those affected is the increase in the parental fees charged for subsidized care to reflect the revised state median income based on the 1990 census data. Another indirect cost may be in the provision that allows for the termination of agreements if the Department for Social Services determines that circumstances or conditions at the provider's day care center place the child subject to the agreement at risk of abuse, neglect or exploitation. An indirect savings to the clients may be in the provision of expedited services with the Department of Social Services assuming administration of the Transitional and At-risk Child Care Programs. Additionally the cabinet has contracted for a new child care market rate survey that may affect the payment rates.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The revised parental fee which increased the costs for some income levels should enable the families to prepare for self sufficiency should their income levels increase to a level that would make them ineligible for child care subsidies. Additionally the cabinet has contracted for a new child care market rate survey that may affect the payment rates.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the affected entities.

(2) Effects on the promulgating administrative body: The effect on the promulgating administrative body is a revision in the parental fees for subsidized child care services and the provision that permits the termination of an agreement if the Department for Social Services determines that circumstances or conditions at the provider's day care center place the child subject to the agreement at risk of abuse, neglect or exploitation. Additionally the proposed amendment revises the regulation to include provisions for the administration of the Transitional and At-risk Child Care Program pursuant to federal regulations under the IV-A program by the Department for Social Services.

(a) Direct and indirect costs or savings: Direct and indirect cost or savings to the promulgating body include a revision to the regulations to include provisions for the administration of the Transitional and At-risk Child Care Programs by the Department for Social Services. These revisions may expedite the service delivery of child care services thereby saving staff time in case processing.

1. First Year: Direct and indirect first year cost or savings to the promulgating body include a revision to the regulations to include provisions for the administration of the Transitional and At-risk Child Care Programs by the Department for Social Services. These revisions may expedite the service delivery of child care services thereby saving staff time in case processing. Additional revisions may be necessary as the cabinet has contracted for a new child care market rate survey that may affect the payment rates. If the cabinet

does not revise the child care rates according to the Administration for Children and Families approved methodology, Kentucky has the potential to lose all of its IV-A federal funding. The estimated amount of this funding is $290,144,800. These funds are used for AFDC administrations and benefit costs, JOBS child care administration and benefits costs, Transitional Child Care administration and benefit costs and At-risk Child Care administration and benefit costs.

2. Continuing costs or savings: Direct and indirect continuing cost or savings to the promulgating body include a revision to the regulations to include provisions for the administration of the Transitional and At-risk Child Care Programs by the Department for Social Services. These revisions may expedite the service delivery of child care services thereby saving staff time in case processing. Additional revisions may be necessary as the cabinet has contracted for a new child care market rate survey that may affect the payment rates. If the cabinet does not revise the child care rates according to the Administration for Children and Families approved methodology, Kentucky has the potential to lose all of its IV-A federal funding. The estimated amount of this funding is $290,144,800. These funds are used for AFDC administrations and benefit costs, JOBS child care administration and benefits costs, Transitional Child Care administration and benefit costs and At-risk Child Care administration and benefit costs.

3. Additional factors increasing or decreasing costs: The cabinet has contracted for a new child care market rate survey that may affect the payment rates. The provision, that permits the termination of an agreement if the Department for Social Services determines that circumstances or conditions at the provider's day care center place a child subject to the agreement at risk of abuse, neglect or exploitation, provides additional protection for children and families receiving child day care services. If the cabinet does not revise the child care rates according to the Administration for Children and Families approved methodology, Kentucky has the potential to lose all of its IV-A federal funding. The estimated amount of this funding is $290,144,800. These funds are used for AFDC administrations and benefit costs, JOBS child care administration and benefits costs, Transitional Child Care administration and benefit costs and At-risk Child Care administration and benefit costs.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the cabinet as a result of this amended regulation. With the provisions to administer the TCC and ARCC there are additional reporting and paperwork requirements that have been shifted from DSI to DSS.

(3) Assessment of anticipated effect on state and local revenues: Positive effect on state and local revenues are in the payments to day care providers that will be turned over in the local economy in payments to cover care giver costs and supplies. Additionally the ability of parents to enter and remain in the job market will increase.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered because implementation of the revised market rate survey and the TCC and ARCC programs require that the federal mandate be followed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 45 CFR 98.32 requires that a record of substantiated parental complaints be maintained and made available to the public upon request may be in conflict with KRS 620.050(4) which limits the department in releasing information regarding investigations of abuse, neglect and dependency.

(a) Necessity of proposed regulation if in conflict: There is not a need to promulgate a proposed regulation to comply with 45 CFR 98.32.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There was not an effort to harmonize this proposed regulation with 45 CFR 98.32.

(6) Any additional information or comments: There are no additional information or comments of which we are aware.

TIERING: Was tiering applied? No. This regulation was not tiered as it implements a new parental fee scale and establishes statewide policy and procedures for implementation of child day care services including the DSS administration of the TCC and ARCC Programs.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 7:240. Kentucky Educational Collaborative for State Agency Children.

RELATES TO: KRS Chapters 158, 161, 605, 610, 630, 635, 640, 645, 1994 Acts ch. 326

STATUTORY AUTHORITY: KRS 158.135, 194.050, 605.110

NECESSITY AND FUNCTION: KRS 605.110 requires that children maintained in a facility or program operated by the Cabinet for Human Resources shall so far as possible maintain a common school education. This administrative regulation sets forth policies for complying with KRS 158.135 and KRS 605.110 in Department for Social Services (DSS), Children's Residential Services (CRS), residential, day treatment programs, and group homes; other treatment programs operated or contracted by the Cabinet for Human Resources serving committed youth and private child caring agencies serving committed children.

Section 1. Definitions. (1) "Cabinet for Human Resources programs" means both state-operated and state-contracted programs.

(2) "Citizens interest committee (CIC)" means the community group of volunteers and parents of youth currently served by the treatment facility, who serve as liaisons to the local treatment facility.

(3) "Department" means the Department for Social Services (DSS), Cabinet for Human Resources.

(4) "Educational administrative staff" means a principal, assistant principal, supervisor, coordinator, director, pupil personnel worker or guidance counselor employed or contracted by the Kentucky Educational Collaborative for State Agency Children to provide educational services.

(5) "Head teacher" means the lead teacher, principal, or lead educator designated by the local district or by the Kentucky Educational Collaborative for State Agency Children (KECSAC) to be responsible for the operation of the daily education program. The head teacher may also be the program director in some facilities.

(6) "Individual education plan (IEP)" means the instructional plan required for state agency children identified as having educational disabilities.

(7) "Individual plan of instruction (IPI)" means the instructional plan required for state agency children not identified as having educational disabilities.

(8) "Individual treatment plan (ITP)" means a social and behavioral intervention plan, including the plan for educational instruction, that is developed for each state agency child being served by a treatment institution or facility.

(9) "Instructional calendar" means the yearly schedule of educational events, including instructional, recreational, and teacher professional development days, holidays and vacation days.

(10) "KDE" means the Kentucky Department of Education.

(11) "KECSAC" means the Kentucky Educational Collaborative for State Agency Children.

(12) "KERA" means Kentucky Education Reform Act.

(13) "Local school district" means the school district where state agency children are provided educational services.

(14) "Program director" means the administrator at a state operated or contracted institution or day treatment facility or administrator of a private child care agency that is responsible for the safety and security of youth and staff and the operation of the treatment facility.

(15) "Private child care agency" means a private, not state

operated program, which provides care or treatment for committed children on a per child contractual basis.

(16) "SAEC" means State Agency Education Council that functions as the site-based decision-making body for state agency children schools.

(17) "School" means the site where the educational program for state agency children is provided.

(18) "State agency children" means those children of school age committed to or in the custody of the Cabinet for Human Resources and placed in a Cabinet for Human Resources operated or contracted institution, facility or day treatment program, or committed children placed in private child care agencies as governed by KRS 158.135(1)(a).

(19) "State agency children's fund" means appropriations to support KRS 158.135 previously known as out-of-district funds.

(20) "Treatment" means the total array of services utilized to produce a positive change in children served by the treatment facility.

Section 2. Governance. (1) An advisory board for the Kentucky Educational Collaborative for State Agency Children (KECSAC) composed of twelve (12) members appointed by the Governor shall provide recommendations in policy development. The KECSAC shall determine the length of terms for members. The advisory board shall meet at a minimum biannually.

(2) Contracting procedures.

(a) The department shall contract with a university training resource center for the establishment of the KECSAC which shall be responsible for the oversight or administration of state and federal education funding to provide educational services to state agency children. The KECSAC shall be financed by the state agency children's fund. The KECSAC shall have knowledge and experience in the following:

1. Kentucky Education Reform Act (KERA), and Kentucky's system of schools;

2. State and federal statutes pertaining to youth with educational disabilities;

3. Kentucky Unified Juvenile Code and the operation of agency programs for juvenile offenders, status offenders and dependent children; and

4. Research regarding the education of at-risk, incarcerated and difficult to motivate youth.

(b) KECSAC shall cooperatively plan programs and state agency children's fund budgets with the department, KDE, State Agency Education Councils (SAEC) and local school districts providing programs to state agency children. Local school districts shall be notified of projected funding levels by KECSAC by January 1, for the following school year.

(c) The KECSAC application to the department shall contain educational goals and objectives for the biennium for which funding is requested. The goals and objectives shall reflect KERA mandates, American Correctional Association standards, Correctional Education Association standards and the specific educational needs of state agency children. The educational goals and objectives shall be compatible with and complimentary to the treatment goals for state agency children.

(d) The KECSAC with the cooperation of the department and KDE shall develop written procedures for the operation of the statewide education system for state agency children to be completed by July, 1995.

(3) Staffing.

(a) Teachers and other educational staff shall be employed through the local school district where the treatment facility is located. If the local school district is not able or willing to provide the educational personnel for the state agency children's treatment facility, the KECSAC shall be notified in writing no later than one year prior to the expiration of the current contract. The KECSAC may contract with another school district for educational staff.

(b) Educational administrative staff, supervisors and teachers employed or contracted by the KECSAC shall meet Kentucky education certification requirements and shall be annually evaluated. Educational staff employed by school districts shall be evaluated in accordance with local school district policy. The KECSAC shall develop procedures for evaluating staff employed directly by the KECSAC and shall receive copies of the evaluation of educational staff by the local school district.

(c) Each state agency school program shall designate a head teacher.

(d) Education staff directly employed by the KECSAC shall be compensated at rates at least commensurate with public school employees with comparable qualifications, experience and assignments in the school district where the treatment facility is located. Statewide KECSAC positions shall be compensated at rates comparable to the average of education positions with similar responsibilities, credentials and experience providing education to state agency children.

(e) State agency children programs shall have a minimum of one (1) certified special education teacher on staff by the 1995-96 school year. The employment of special education certified teachers shall reach at least one-half (1/2) of the total teachers employed in each state agency program by the school year 1996-97. Exceptions shall be made only with the agreement of the agency treatment facility, the local school district, and KECSAC.

(f) Other specific services identified by the admission and release committee as needed for a youth shall be accessed by contract agent. The KECSAC shall comply with the following administrative regulations relating to youth with disabilities: 707 KAR 1:170, 707 KAR 707 KAR 1:180, 707 KAR 1:190, 707 KAR 1:200, and 707 KAR 1:220.

(4) State Agency Education Council (SAEC). Pursuant to KERA requirements related to site-based decision making councils, state agency education programs shall establish SAEC for each school operated under KECSAC by school year 1996-1997.

(a) Formation of SAEC.

1. The SAEC shall have as members, two (2) teachers, one (1) head teacher, one (1) juvenile counselor or one (1) direct care staff in private child care program, one (1) local citizens interest committee member from the treatment facility and the facility program director. In cases where the head teacher or principal and program director are the same person, an additional educational representative shall be selected. The head teacher shall serve as the chair of the SAEC.

2. Teacher members of the council shall be nominated and elected by the teachers at the school where they are assigned. The juvenile counselor or direct care staff council member shall be nominated and elected by juvenile counselors or staff at the facility where the counselor is assigned.

3. The local CIC members of the SAEC shall be nominated and elected by CIC members, and shall not be an employee or relative of an employee of the school district, local school board, or employees or relative of an employee of the state or private child care agency staff.

4. Nomination and election of council members shall be held during April each year with the term of services to begin July 1. Each member shall be selected by secret ballot by their respective classification peers, except in circumstances where that member class is comprised of only one individual who shall automatically be a member of the council. Council members shall serve terms of one (1) year and are eligible for reelection.

(b) Training of council members shall be the responsibility of the KECSAC. The council shall work cooperatively with the local school district, KDE, and KECSAC to pursue training that meets the needs of the council.

(c) Responsibilities of the SAEC.

1. The SAEC shall have the authority to establish school policy which provides an environment to enhance student achievement and

assist schools in meeting goals established by state and federal regulations, local school district policy, KECSAC and program contract requirements and the school council itself. Activities of the SAEC shall be designed to improve the identified educational goals of state agency youth.

2. The head teacher shall be the primary educational administrator and the instructional leader of the school and shall be responsible for insuring implementation decisions of the council.

3. Areas of responsibility assumed by the council shall be in compliance with KRS 160.345. The council, within KECSAC, department and local school district policies, shall adopt policies to be implemented by the state agency school program. The SAEC functions may include the following:

a. Establish rules and bylaws for general operating procedures;

b. Determining school priorities, based on an assessment of the educational needs of the students and goals for schools as established in KRS 158.6451 for state agency children.

c. Plan the process for the initial and periodic academic, behavioral, cognitive and vocational assessments of state agency youth.

d. Plan for regular involvement of educational personnel on state agency program treatment teams.

e. Establish procedures to coordinate the educational planning with treatment planning.

f. Establish program-level budget priorities within funding allocations to assist the students in the school in meeting the established educational goals.

g. Plan the curriculum to enhance the attainment of student educational goals;

h. Conduct educational program needs assessment;

i. Plan for technology and its utilization;

j. Select instructional materials appropriate to address educational goals improvement;

k. Review and determine instructional practices and needed professional development for improved programs;

l. Determine which instructional supplies shall be ordered in the school;

m. Prioritize and select equipment;

n. Determine educational staff time and assignments including paraprofessional and other support personnel;

o. Schedule the academic day and week consistent with treatment facility policy and local education agency policy;

p. Make recommendation of use of school space during the school day;

q. Establish relationships with parents and members of the surrounding community;

r. Coordinate the implementation of special programs as mandated by state and federal statute and regulation;

s. Develop procedures for and facilitation of academic transition of youth to local educational and work settings;

t. Recommend the employment of head teacher or principal and other teacher and staff vacancies within contract limitations and in consultation with the local education agency or the Director of KECSAC.

4. The SAEC shall submit to the KECSAC and the local school district an annual program plan or transformation plan. The components of the plan shall be specified by KECSAC.

5. SAEC meetings.

a. The head teacher or principal shall be the chair of the council and shall be responsible for securing minutes that record the council's actions.

b. Decisions shall be made by consensus.

c. Meetings of the council are open to the public and subject to open meetings as governed by KRS 61.805, KRS 61.810 and KRS 61.815.

6. Appeal of SAEC decisions. Appeal of council decisions may be made by a parent, student, employee of the school, state agency program staff or resident of Kentucky. The SAEC and the KECSAC shall develop a process for appealing a decision made by the SAEC as governed by KRS 160.345.

(5) Policy application. In the case of conflicting policies (e.g. the use of corporal punishment), the Cabinet for Human Resources policies for the care and treatment of youth shall be followed.

(6) Student eligibility. If a specific activity (e.g., football, debate, etc.) is not provided to youth in a state or private contracted agency program, the youth shall not lose eligibility to participate based on the requirements in 702 KAR 7:070. Eligibility shall be figured on a month to month basis (e.g., nine (9) months in a DSS facility without a formal football program leaves nine (9) months of eligibility in a local school district). The eligibility period shall not exceed one (1) additional year. Other eligibility criteria however, shall be met by the youth.

Section 3. Finance. (1) The amount of funds generated by state agency children under the Support Education Excellence in Kentucky (SEEK) Program as specified in KRS 157.360 for the guaranteed SEEK base and adjustments shall be sent annually to the Cabinet for Human Resources to utilize in total to contract with the KECSAC for the purpose of providing education for state agency children as governed by KRS 158.135. The KECSAC shall contract with local school districts where state agency programs are located. If a school district has elected not to provide educational services to state agency children, the KDE shall annually deduct the state SEEK base and adjustments and an amount equal to the local portion of the SEEK base and adjustments from the school district that choose not to provide services. This amount shall be sent to the Cabinet for Human Resources to utilize in total to contract with the KECSAC to provide educational services to state agency children.

(2) Funds generated by the Support Educational Excellence in Kentucky (SEEK) formula by state agency children shall be used to fund the contract budgets between the KECSAC and local school districts and shall be used in total for direct and supportive educational services for state agency children. The base funding level set out in KRS 157.360 and KRS 160.470 which is the guaranteed amount of revenue per pupil which is generated by the state agency children shall:

(a) Consist of a combination of state SEEK funds and state funds designated through KRS 158.135 for state agency children who were not residents of local school districts providing education to the children prior to placement in the state agency program; and

(b) Consist of a combination of state and local SEEK funds and state agency children's funds designated through KRS 158.135 for children in state agency programs who were already residents of the local school district providing education to the children prior to placement in the state agency program.

(3) The KECSAC shall be considered the same as a school district for the generation, application, distribution and accountability of state and federal funds, other than SEEK, available to educate state agency children.

(4) An annual contract or memorandum of agreement shall be negotiated between the KECSAC and each school district providing education to state agency children. An itemized budget shall be part of the contract.

(5) The State Agency Children's Fund as specified in KRS 158.135 shall be sent from KDE to the Cabinet for Human Resources and provided to the KECSAC through contract with the Cabinet for Human Resources. Budgeting procedures utilized for the school year 1993-94 shall be utilized as part of the 1994-96 biennial plan for allocation of funds. By the 1996-1998 biennium, the KECSAC shall design and phase in an equitable system to distribute these funds by approved contract with local school districts to provide state agency children educational programs, educational administration, educational support services and discretionary funds which support projects designed to improve the education of state agency children.

(6) The KECSAC as part of the contract with each local school

district shall facilitate, with the State Agency Education Council and the local school district, the plan for professional development of certified staff. If the local school district has chosen not to provide the educational services to state agency children, the KECSAC with the State Agency Education Council shall develop and present to the KDE a plan for professional development. The KECSAC shall submit the annual consortia professional development plan to the KDE. The professional development plan shall summarize the professional development activities for certified education staff.

(7) The KECSAC shall submit a master technology plan to the School Facilities Construction Commission and the KECSAC shall receive a direct allocation of technology funds which shall be matched by state agency children's funds.

(8) Pursuant to KRS 157.190, 157.110, and 160.330 the KECSAC staff shall, as part of the biennial budget plan, make a request to the Commissioner of KDE for the textbook needs of state agency children. The State Agency Educational Councils shall provide the KECSAC with projected textbook needs for the children in their specific state agency program.

(9) The KECSAC shall obtain information from the Kentucky Department of Education and the Workforce Development Cabinet regarding all discretionary and entitlement state, federal and miscellaneous funding opportunities available to local school districts and file applications or reports necessary to procure and use funds for the education of state agency children.

(10) If the Cabinet for Human Resources is opening or contracting with a new program for treatment services, the Cabinet for Human Resources shall notify KDE and KECSAC prior to the biennial budget submission regarding the projected number of youth to be educated in the new program. The education budget for the new program shall be based on expected capacity for the first year of operation rather than prior year average daily attendance. Thereafter, the budget shall be based on prior year average daily attendance.

(11) The KECSAC shall submit an application for adult education services for youth age sixteen (16) years and above who are committed to the Cabinet for Human Resources and shall use funds received to provide Adult Basic Education services to eligible youth.

Section 4. Operations. (1) Assessments.

(a) KECSAC shall develop procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas in order to determine educational objectives for the individual treatment plan. Educational goals and objectives shall be consistent with goals specified in each youth's individual treatment plan.

(b) If the youth is suspected to have an educational disability as governed by 707 KAR 1:180 and 707 KAR 1:190 an assessment shall be administered, following required due process procedures.

(c) School psychologists may be employed or contracted by the KECSAC for purposes of meeting required procedures for state agency children with educational disabilities.

(2) State agency children with identified educational disabilities. In school districts providing contract services, the KECSAC staff and agency program staff shall coordinate the completion of required individual education plan procedures for the identification, evaluation, implementation and placement of children with educational disabilities pursuant to 707 KAR 1:180 and 707 KAR 1:190.

(3) Instructional services.

(a) The teacher pupil ratio for state agency children shall be no more than ten (10) students to one (1) teacher without a classroom aide and fifteen (15) students to one (1) teacher with a classroom aide and comply with 707 KAR 1:230.

(b) An individual plan of instruction shall be developed for state agency children with goals and objectives that relate to the education goals set out in KRS 158.6451. The individual plan of instruction shall be developed in coordination with the ITP. If a youth is determined to have an educational disability the IEP requirements as governed by 707 KAR 1:180 shall apply.

(c) A 230 day school calendar year shall be in operation unless specified otherwise in the youth's ITP or IEP. The head teacher in consultation with the local school district and program director shall submit a 230 day school calendar to the KECSAC with the annual contract for services. The calendar shall specify instructional, professional development, holiday and vacation days for the school year beginning July 1 of the contract year.

(d) State agency children who are fourteen (14) years of age or older who do not have an identified educational disability with an IEP and who do not read at a sixth grade level as measured by a standardized achievement test, shall be provided developmental reading, listening and writing instruction.

(4) Accountability.

(a) State agency children shall have the same assessments administered as other public school youth in A-5 and A-6 schools as specified in 703 KAR 4:080. The average daily attendance data for day treatment programs and the results of the assessments shall be included in the accountability index of the last A-1 school the youth attended prior to admittance to a state agency program or the A-1 school the youth would have attended if the youth had remained in that local school district.

(b) State agency children shall develop portfolios consistent with the content requirements of the state's assessment program. A youth's portfolio shall be sent to the receiving school as part of the educational records when youth transition from the state agency program.

(c) An accountability system shall be designed by the KECSAC for state agency school programs. The accountability system shall address the attainment of the goals for schools set out in KRS 158.6451 for state agency children. A companion system of rewards and sanctions to those specified in 703 KAR 4:080 for A-2 through A-6 schools shall be designed by the KECSAC.

(d) State agency children's school programs shall be in compliance with accreditation standards of the American Correctional Association and the Correctional Educational Association, if appropriate and if consistent with the KECSAC mission and school goals set out in KRS 158.6451.

(5) Transition.

(a) The KECSAC shall develop transition procedures for state agency children moving from the treatment programs to the next instructional or vocational setting. The transition procedures shall address responsible staff, timelines, format of information to be transmitted, support systems necessary and follow-up schedules.

(b) The KECSAC shall design and implement a system to collect school follow-up data.

(c) The last school or school district a state agency youth attends prior to placement in a state agency program shall be responsible for forwarding the educational records to the state agency program within five (5) school days of receipt of the request. Upon receipt of the school records, the state agency program shall notify the sending school district office of the pupil personnel director, that the child is now in school attendance and not a drop out.

(d) The head teacher shall insure that the educational records of state agency children be forwarded to the receiving school within five (5) school days following the release of the youth from the treatment facility.

(e) The KECSAC shall develop a systematic transition process for students with disabilities in compliance with requirements in 707 KAR 1:220, Section 10.

MASTEN CHILDERS II, Secretary
PEGGY WALLACE, Commissioner
APPROVED BY AGENCY: July 7, 1994
FILED WITH LRC: July 14, 1994 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 22, 1994, at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275

East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 17, 1994: William K. Moore, Jr., Department of Law, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected include nearly 4,000 court-committed and diverted youth who are served in 48 programs including residential facilities, group homes, day-treatment centers, and reeducation programs operated or contracted by the Cabinet for Human Resources to serve as Juvenile Corrections for Kentucky and the twenty three local educational agencies providing services to state agency children statewide as well as other local school districts that may be added in the effort to serve state agency children. In addition, some of these youth are served in private child care programs and department of MH/MR operated or contracted programs.

(a) Direct and indirect costs or savings to those affected: Direct and indirect costs or savings to those affected include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children; and the provision that all state and federal educational funds available to school districts are also available to educate state agency children.

1. First Year: First year direct and indirect costs or savings include the development of the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; a budgeting process which will equalize per pupil expenditures; and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

2. Continuing costs or savings: Continuing direct and indirect costs or savings to those affected include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates; continues availability of a fair share of educational funds for state agency children; and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Additional factors increasing or decreasing the costs of services to state agency children include the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts.

(b) Reporting and paperwork requirements: With the establishment of the KECSAC there will be some additional reporting and paperwork requirements for all affected entities as the KECSAC develops procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas, transitions from the treatment programs to the next instruction or vocational setting, collection of follow-up school data, and the development of programs and budget requests for each school year. Additional paperwork and reporting requirements may be imposed as the KECSAC in cooperation with the Department for Social Services and Kentucky Department of Education develop written procedures for the operation of the statewide education system for state agency children. Reporting and paperwork requirements will be consistent in collection and utilization efforts.

(2) Effects on the promulgating administrative body: The effect on the promulgating agency is in the development of a contract with the KECSAC that with collaboration of the Kentucky Department of Education will include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education; the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates;the availability of funds to educate state agency children equal to funds available to local school districts; and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children. The accomplishment of these goals will ensure the Department for Social Services meets statutory mandates pursuant to KRS 605.110 and KRS 620.145.

(a) Direct and indirect costs or savings: Direct and indirect costs or savings to the agency include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, educational funds will be available so CHR treatment funds are not diverted for educational purposes, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

1. First Year: First year direct and indirect costs or savings include the development of the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, educational funds will be available so CHR treatment funds are not diverted for educational purposes, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

2. Continuing costs or savings: Continuing direct and indirect costs or savings to the agency include the provision of a high quality educational support service through a collaborative delivery system involving local education agencies, the Department for Social Services, and the Kentucky Department of Education, the provision of administrative services and leadership in an efficient and cost effective manner that is in compliance with KERA and other applicable state and federal mandates, and the provision of a comprehensive evaluation of the effectiveness of the delivery of educational services to state agency children.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing the costs of services to state agency children include the number of youth committed to the cabinet and their specific educational and treatment goals, the number of local educational agencies participating and the continued implementation of KERA requirements for school districts. Using educational funds for educational purposes negates the use of treatment funds to educate state agency children.

(b) Reporting and paperwork requirements: With the establishment of the KECSAC there will be some additional reporting and paperwork requirements for all affected entities and the agency as the KECSAC develops procedures for the assessment of state agency children in the cognitive, social, academic and vocational areas,

transitions from the treatment programs to the next instruction or vocational setting, collection of follow-up school data, and the development of programs and budget requests for each school year. Additional paperwork and reporting requirements may be imposed as the KECSAC in cooperation with the Department for Social Services and Kentucky Department of Education develop written procedures for the operation of the statewide education system for state agency children. The reporting will be consistent in format and collection which will enable staff to analyze the data for the development of programs and budget request.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on local revenues as the local match for the KECSAC is derived from the SEEK allocations if the local district opts to not participate in the program for state agency children.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as KRS 605.110 requires the establishment of the KECSAC.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are unaware of any statutes, administrative regulations or government policy that are in conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: We are unaware of any statutes, administrative regulations or government policy that are in conflict with this administrative regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: We are unaware of any statutes, administrative regulations or government policy that are in conflict with this administrative regulation.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not applied as this regulation establishes the KECSAC which will coordinate the development of written procedures for the operation of the statewide education system for state agency children.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:635. Conditions of coverage for the Kentucky Hospital Care Program (KHCP).

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.640

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the Kentucky Hospital Care Program (KHCP) program, which is a program of hospital care for the indigent provided by Kentucky acute, psychiatric and rehabilitation 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.

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 parents is included in the family unit along with his child; if the minor parent, his child and the child's other parent, regardless of their marital status, are in the same household, they shall be 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, but excluding nonemergency care rendered in the emergency room, for Kentucky's indigent citizenry provided by Kentucky hospitals participating in the Kentucky Medicaid Program.

(3) "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) "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(5) "Self-support" means a demonstration by the minor child that he is paying more than fifty (50) percent of his living expenses (i.e., proof of wages versus expenditures for living expenses, etc.).

Section 2. KHCP Eligibility Manual. (1) The KHCP Eligibility Manual, dated July 15, 1994, 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. Eligibility Requirements. (1) For an individual or family unit to be KHCP eligible the following requirements shall be met:

(a) 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;

(b) 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;

(c) The individual or family unit shall be encouraged to apply for Medicaid at the local Department for Social Insurance office if potentially eligible;

(d) Except for Medicaid recipients receiving additional days of coverage per hospital stay, a potential KHCP recipient receiving services on or after July 15, 1994 shall be required to apply for KHCP benefits by not later than thirty (30) days from the date of service or notification by the hospital of potential KHCP eligibility, whichever is later; and

(e) A potential KHCP recipient receiving services on or before June 30, 1994 shall be required to apply for KHCP services by August 15, 1994 or thirty (30) days from date of notification by the hospital of potential KHCP eligibility, whichever is later.

(2) 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.

(3) 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. Exclusions from Eligibility. The following shall not be eligible for coverage under KHCP:

(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.

(3) Medicaid recipients who have been decertified by the peer

review organization for not meeting psychiatric level of care;

(4) Individuals who receive ongoing Medicaid in any category including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI); 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.

Section 5. 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.

(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.

(4) No retroactive coverage for individuals between the ages of twenty-two (22) through sixty-four (64) residing in a psychiatric facility shall be available for any period prior to July 15, 1994.

Section 6. Income Considerations. Eligibility shall be determined by comparing the family unit's (or that of the individual not living with other family members) total annual gross income to the poverty income guidelines for the appropriate family size. In comparing the family unit's total annual gross income to 100 percent of the official poverty income guidelines, the following policies shall be applied:

(1) Total annual gross income shall be based on income received during the prior twelve (12) months with adjustments for projected changes in income as appropriate;

(2) Hospitals may require submission of tax returns, pay stubs, employer statements, and similar documents to verify income;

(3) Upon verification that income will increase or decrease, the anticipated income shall be used;

(4) 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;

(5) Income of all family unit members, including ineligible members, shall be considered and compared to the appropriate KHCP family size;

(6) 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;

(7) 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);

(8) 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;

(9) Income from a common law spouse living in the same household shall be considered. (Common law marriages shall be recognized if recognized by other states or the couple are holding themselves out to the community as married); and

(10) State supplemental payments to individuals in personal care homes shall be excluded from consideration.

Section 7. Resource Considerations. (1) Resources shall not be considered in determining KHCP eligibility for the period of July 1, 1993, through January 31, 1994.

(2) Effective for determinations of eligibility for the period beginning on February 1, 1994, and ending on April 15, 1994 the following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments, but not including real or personal property including jewelry, household goods, clothing, buildings, land, businesses, and professional practices) shall be applicable: $2,000 for an individual; $4,000 for a family size of two (2); and fifty (50) dollars for each additional family member.

(3) Effective for determinations of eligibility for periods beginning on or after April 16, 1994 the following provisions shall be applicable with regard to the computation of allowable resources:

(a) The following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments) shall be applicable: $2,000 for an individual; $4,000 for a family size of two (2); and fifty (50) dollars for each additional family member;

(b) A homestead, household goods, and personal property including jewelry, clothing, and other items of a personal nature shall be excluded from consideration;

(c) Equity of $6,000 in income producing nonhomestead real property, business or nonbusiness, essential for self-support shall be excluded from consideration;

(d) Equity of $4,500 in automobiles shall be excluded from consideration;

(e) Burial reserves of up to $1,500 per individual, burial spaces including the plot, casket, vault, and items of a similar nature, and irrevocable prepaid burial plans, contracts and burial trusts shall be excluded from consideration;

(f) The value of excludable assets in excess of excluded amounts shall be added to liquid assets for comparison against the liquid asset upper limits; and

(g) Other assets not excluded or within the upper limits shall be added to liquid assets for comparison against the liquid asset upper limits.

(4) Resources above the allowable amounts shall result in ineligibility for benefits under KHCP, but only to the extent that liquid resources exceed the allowable upper limits; this means that liquid resources can be spent down to establish eligibility. For example, if an otherwise eligible individual with $2,300 in liquid assets is hospitalized, he would become eligible for KHCP coverage after receiving $300 in billable services.

Section 8. Verification Requirements. Except as specified in Section 3 of this administrative regulation, the cabinet shall require verification in accordance with the following in eligibility determinations (although 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;

(2) Verification shall be required every six (6) months, or more frequently at the option of the hospital, unless the family unit's income has increased;

(3) 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;

(4) If the family unit alleges zero income, verification may be obtained or at the option of the hospital waived;

(5) Income and resource verification may be waived at the option of the hospital for minor outpatient procedures or services;

(6) 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; and

(7) Applicants for KHCP benefits must provide requested information within ten (10) days unless this requirement is waived by the hospital.

Section 9. 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 eligible and simultaneously determined Medicaid eligible. An individual may apply for ongoing Medicaid and KHCP eligibility concurrently.

(2) An individual may apply for both KHCP and Medicaid spenddown eligibility.

(3) For Medicaid spenddown eligibility any hospital expense attributed to the individual's KHCP 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 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.

Section 10. Fair Hearing. (1) An applicant may request a fair hearing on his KHCP eligibility determination within thirty (30) days of the denial or approval date.

(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 contests medical necessity (whether before or after the fact) for a KHCP eligible person or 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 service using Medicaid standards of medical necessity; the decision of the PRO shall be binding upon the hospital for KHCP purposes. It shall be the PRO's responsibility to advise the hospital, the KHCP or Medicaid recipient, and the recipient's physician, in writing, of the PRO's decision. If the KHCP or Medicaid 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) Except for nonemergency care rendered in the emergency room, KHCP recipients, including individuals with a pending KHCP application, shall not be billed for hospital services provided by Medicaid participating hospitals in accordance with KRS 205.640.

Section 12. Except as otherwise specified, the provisions of this administrative regulation shall be applicable for determinations of eligibility made, and services provided, on or after April 16, 1993 except that the Medicaid Program shall also recognize and accept determinations of eligibility made under the previous program guidelines for the period of July 1, 1993 through April 15, 1994.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994 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: Masten Childers II

(1) Type and number of entities affected: All hospitals participating in the Medicaid Program.

(a) Direct and indirect costs or savings to those affected: None

1. First Year:

2. Continuing 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: *This regulation provides for eligibility standards for hospital care for the indigent.

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

907 KAR 1:670. Conditions of Medicaid provider participation; enrollment, documentation of services, disclosure, appeals process, and sanctions.

RELATES TO: KRS 205.510 to 205.990, 1994 Ky. Acts chs. 96, 316, 42 CFR 431.107, Parts 455, 1002, 42 USC 1320a-3, a-3a, a-5, a-7, 1395cc, vv, 1396b, d, m, n

STATUTORY AUTHORITY: KRS 194.050, 205.520, 250.560, 42 USC 1396a

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Medicaid Program. 1994 Ky. Acts chs. 96 and 316 specify that the Cabinet for Human Resources and the Department for Medicaid Services shall be responsible for the control of Medicaid provider fraud and abuse. KRS 205.520 authorizes 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 Medicaid provider participation. In the event of a conflict between other topical administrative regulations under Title 907, or manual materials incorporated by reference in administrative regulations under Title 907, and this administrative regulation, the latter shall prevail.

Section 1. Definitions. (1) "Abuse" shall have the same meaning as that shown in 1994 Acts ch. 316, sec. 1(8), p. 650.

(2) "Applicant" means a person or entity who submits an application to become a Medicaid provider.

(3) "Application" means completion and submission of forms MAP 343, MAP 343B, and MAP 343C, and any required addendum specific to a provider type.

(4) "Bribes and kickbacks" means soliciting or receiving any payment, or offering or paying any payment whether in cash or in kind, in return for:

(a) Referring a client to a person for any medical care, services or supplies; or

(b) Purchasing, leasing, ordering or recommending any medical care, services or supplies, for which payment is claimed under the Medicaid program.

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

(6) "Claim" means any request for payment under the Medicaid program. A claim may be submitted on:

(a) A paper form;

(b) An electronic billing process; or

(c) Any format approved by the department.

(7) "Convicted" shall have the same meaning as that shown in 1994 Acts ch. 96, sec. 13(1), p. 186, regardless of whether an appeal from that judgment is pending.

(8) "Client deception" means misleading or threatening a client, or charging or agreeing to charge or collect any fee from a client in excess of the maximum fee, rate or schedule amount.

(9) "Conspiracy" means entering into any agreement, plan, scheme or understanding to defraud the Medicaid program by obtaining or aiding anyone to obtain payment of any false, fictitious or fraudulent claim.

(10) "Conversion" means converting a medical assistance payment, or any part of a payment, to a use or benefit other than for the use and benefit intended by the Medicaid program.

(11) "Department" means the Department for Medicaid Services.

(12) "Disclosure" means the provision of information in accordance with the requirements shown in 42 CFR 455, Subpart B.

(13) "Disclosing entity" means a Medicaid provider or a fiscal agent.

(14) "Exclusion" means the termination of the participation of a provider or the denial of the enrollment of a provider; and no reimbursement to the provider under Medicaid for items or services furnished by the provider.

(15) "Factoring" means assigning payments under the Medicaid program to a factor, either directly or by power of attorney; or receiving payment through any person whose compensation is not directly related to the cost of processing the claim, is related to the amount collected or is dependent upon collection of the payment.

(16) "False claims" are claims for:

(a) Unfurnished medical care, services or supplies;

(b) An amount in excess of established rates or fees;

(c) Medical care, services or supplies provided:

1. At a frequency or in amounts not medically necessary;

2. In amounts substantially in excess of the customary charges or costs to the general public; or

3. Which the provider is aware of the possibility of third party payment, but chooses not to bill the third party payor.

(17) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.

(18) "Full investigation" means the activities of the Medicaid Fraud Control Unit (MFCU) to resolve a complaint of Medicaid abuse or fraud which has been referred to it directly or from the Office of the Inspector General (OIG) of the Cabinet for Human Resources.

(19) "Furnish" means to provide medical care, services or supplies that are:

(a) Provided directly by the person;

(b) Provided under the supervision of the person: or

(c) Prescribed by the person.

(20) "Managing employee" means a general manager, business manager, administrator, director or other individual who exercises operational or managerial control over, or who conducts the day-to-day operation, of an institution, organization, or agency.

(21) "Medicaid Fraud Control Unit" (MFCU) means the unit of staff in the Office of the Attorney General of Kentucky, certified under the provisions of 42 USC 1396b(q), which conducts a statewide program for the investigation and prosecution of violations of all state laws regarding fraud and abuse in connection with the provision of medical assistance and the activities of providers of Medicaid.

(22) "Preliminary investigation" means the activities of the Office of Inspector General (OIG), MFCU, or the department to determine whether a complaint of Medicaid abuse or fraud has sufficient basis to warrant a full investigation.

(23) "Provider" shall have the same meaning as that shown in 1994 Acts ch. 316, sec. 1(7), p. 650.

(24) "Recipient" shall have the same meaning as that shown in 1994 Acts ch. 316, sec. 1(9), p. 650.

(25) "Reliable evidence" means:

(a) Preliminary determinations by audit or utilization review staff of unacceptable practices or significant overpayments;

(b) Information of an ongoing investigation of a provider involving fraud or criminal conduct involving the Medicaid program from state investigating or prosecutorial agency, or other law enforcement agency;

(c) Information from a state professional licensing or certifying agency of ongoing investigation of a provider involving fraud, abuse, professional misconduct, unprofessional conduct or utilization; or

(d) Information from department staff or other sources regarding unacceptable practices or program abuse which have been verified.

(26) "Sanction" means any final administrative action taken by the department which limits a person's or a provider's participation in the Medicaid program or imposes a fiscal penalty against the provider including the imposition of civil penalties and interest and the withholding of payments. Sanctions which may be imposed are described in 1994 Ky. Acts ch. 316, sect. 9(1)(a)-(e), p. 653, and 1994 Ky. Acts ch. 96, sec. 9(1)(a)-(e), p. 185, and Section 9 of this administrative regulation.

(27) "Services" means medical care, services or supplies provided to recipients under Medicaid.

(28) "Significant business transaction" means any business transaction or series of transactions that, during any one (1) fiscal year, exceed the lesser of $25,000 or five (5) percent of a provider's total operating expenses.

(29) "Subcontractor" means:

(a) An individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) An individual, agency or organization with which a fiscal agent has entered into a contract, agreement, purchase order or lease including real property, to obtain space, supplies, equipment or services provided under Medicaid.

(30) "Supplier" means an individual, agency or organization from which a provider purchases goods and services used in carrying out its responsibilities under Medicaid.

(31) "Unacceptable practice" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in 1994 Ky. Acts ch. 316, sec. 1(2) and (8), pp. 649-650, and 1994 Ky. Acts ch. 96, sec. 1(2) and (8), p. 182, or willful misrepresentation, and includes the following practices:

(a) Submitting, or causing the submission of false claims, or inducing, or seeking to induce, any person to submit false claims;

(b) Making, or causing to be made, or inducing, or seeking to induce, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of any event affecting the right to payment of any person and concealing or failing to disclose the event with the intention that a payment be made when not authorized or in a greater amount than due;

(d) Conversion;

(e) Soliciting or accepting bribes and kickbacks except in the case of discounts or reductions in price which are disclosed to the client and the department and reflected in a claim, or payments which are made under the terms of a valid employer-employee relationship;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements as contained in Section 4 of this administrative regulation;

(g) Submitting a claim or accepting payment for medical care, services or supplies furnished by a sanctioned person;

(h) Seeking or accepting additional payments such as gifts, money, donations, or other consideration in addition to the amount paid or payable under the Medicaid program for any medical care, services or supplies for which a claim is made;

(i) Deceiving, misleading or threatening a recipient, or charging or agreeing to charge or collect any fee from a recipient in excess of the maximum Medicaid fee, rate or schedule amount;

(j) Engaging in conspiracy;

(k) Furnishing medical care, services or supplies that fail to meet professionally recognized standards, or licensure standards promulgated under KRS Chapter 216B, for health care or which are beyond the scope of the person's professional qualifications or licensure;

(l) Illegally discriminating in the furnishing of medical care, services or supplies based on a recipient's race, color, national origin, religion, sex, age, disabling condition, or marital status;

(m) Factoring;

(n) Offering or providing any premium or inducement to a recipient in return for the recipient's patronage of the provider or other person to receive medical care, services or supplies under the Medicaid program;

(o) Failure to meet disclosure requirements;

(p) Unbundling; and

(q) An act committed by a nonprovider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

(32) "Unbundling" means submitting multiple claims for constituent parts of services provided which results in enhanced reimbursement to a provider for a covered service.

(33) "Withholding" means the process by which claims are processed, but are not paid to a provider, with payments for such claims withheld, pending the investigation of a report of unacceptable practices.

Section 2. Enrollment Process for Participation in Medicaid. (1) Scope.

(a) The department shall contract with only those persons or entities who can demonstrate that they are qualified to participate as a provider.

(b) All persons or entities who wish to participate in the Medicaid program shall be enrolled as participating providers prior to being eligible to receive reimbursement.

(2) New enrollments. Any person or entity interested in participating as a provider on or after the effective date of this administrative regulation shall be required to submit an application for enrollment in accordance with this section.

(3) Enrolled providers. All persons or entities enrolled as participating providers in Medicaid prior to the effective date of this administrative regulation shall be required to submit an application for enrollment upon notice from the department.

(a) Providers shall have sixty (60) days from the date of the notice to submit a completed and signed application to the department.

(b) The notice shall inform the provider that failure to return the completed and signed application within sixty (60) days shall result in termination of participation and shall advise the provider of appeal rights as per Section 10(12)(c) of this administrative regulation.

(c) Submission of the application within sixty (60) days shall permit the continuation of the existing provider participation which shall remain in effect until a determination with respect to the application for enrollment is made and notice of approval or denial of enrollment is sent to the provider.

(d) The department may revise enrollment requirements and reenroll providers if necessary for effective management of the Medicaid program.

(4) Application for enrollment as a participating provider shall be processed in the following manner:

(a) All applicants for participation shall complete a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity, provide proof of a currently valid license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any other information requested for processing of the application for participation.

(b) The department may require additional information from the applicant with regard to qualifications for participation. If the applicant does not respond within the time period specified in the request, the application for participation may be denied unless an extension of time is requested and granted.

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards as promulgated under KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d) The department shall complete its application review and determine whether or not to enroll the applicant within ninety (90) days after receipt of the completed application and any additional information requested by the department. The department may take additional time for the decision when necessary for resolution of issues or disputes.

(5) Approval of an application.

(a) Upon approval of an application, the provider shall be issued

an identifying number to be used exclusively by the provider for billing and identification purposes.

(b) A provider's participation shall begin on the date specified in the notification of approval of program participation and continue for the period specified in the notification, unless the provider participation is otherwise terminated in accordance with this administrative regulation.

(6) By enrolling, the provider (and all subcontractors pursuant to written agreement made a part of the contract) agrees to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Furnish all information regarding the nature and extent of services and claims for payment submitted by, or on behalf of, the provider to representatives of the cabinet, the Attorney General, the Auditor of Public Accounts, and the Secretary of the United States Department of Health and Human Services upon request;

(c) Comply with the disclosure requirements of Section 3 of this administrative regulation;

(d) Comply with the applicable advance directives requirements of 42 USC 1396a(w) with regard to the right to accept or reject extreme lifesaving medical procedures;

(e) Accept payment from Medicaid as payment in full for all care, services and supplies billed under the program, except where specifically provided for in law to the contrary;

(f) Submit claims for payment only for care, services and supplies actually furnished to eligible persons and medically necessary or otherwise authorized by law;

(g) Provide true, accurate and complete information in relation to any claim for payment;

(h) Permit review, or audit, by representatives of the cabinet, the Attorney General, the Auditor of Public Accounts, and the Secretary of the United States Department of Health and Human Services, or any other investigation authority, of all books or records or, in the discretion of the auditing agency, a sample thereof, relating to services furnished and payments received under Medicaid, including patient histories, case files and patient specific data;

(i) Not engage in any activity which would constitute unacceptable practice;

(j) Comply with all terms and provisions contained in the provider agreement; and

(k) Comply with all applicable federal and state statutes and regulations relating to their provider type and provision of services under the Medicaid program.

(7) Denial of an application.

(a) The following factors shall be reason for denial of participation:

1. Any false representation or omission of any material fact in making an application;

2. Any current suspension, exclusion or involuntary withdrawal from participation in any governmental or private medical insurance program;

3. Any false representation or omission relating to the application for any license, permit, certificate or registration related to a profession or business;

4. Any previous failure to correct a deficiency in the operation of a business or enterprise after having received written notice of the deficiencies from a state or federal licensing, certifying or auditing agency;

5. A current indictment for, or recent conviction for, fraud and abuse or unacceptable practice in Medicaid of this or any other state, Medicare, or any other publicly funded program;

6. Failure to comply with any policy of the department.

(b) If an application is denied, the applicant may resubmit only upon correction of the factors leading to its denial, or after the expiration of any period of exclusion imposed under 1994 Ky. Acts ch. 316, sec. 9(1)(e), p. 653, or 1994 Ky. Acts ch. 96, sec. 9(1)(e), p. 185, whichever is later.

(c)1. Notice of denial of enrollment.

2. A written notice of the denial shall be given which contains:

a. The reason for the denial;

b. The date the applicant may make a new submission for enrollment; and

c. The date of denial which shall be effective upon the date of the written notice.

(8) An out-of-state provider of care services or supplies may enroll for a limited time period of thirty (30) days in an exceptional situation for emergency services provided to an eligible recipient.

Section 3. Required Provider Disclosure. (1) Disclosure by providers and fiscal agents; information on ownership and control. Each provider and fiscal agent shall comply with the disclosure of information requirements contained in 42 CFR 455 Subpart B.

(2) Time and manner of disclosure.

(a) The required provider information specified in 42 CFR 455, Subpart B shall be provided to the department:

1. Upon application for enrollment;

2. Annually thereafter; and

3. Upon request by the department or the Secretary, United States Department of Health and Human Services.

(b) The disclosure requirement may coincide with the certification or recertification period except when the provider is certified other than on an annual basis.

(c) The provider shall file an amended, signed ownership and disclosure form with the department within fifteen (15) days if there is a:

1. Change in ownership or control;

2. Change of a managing employee or management company;

3. Change in a provider's federal tax identification number;

4. Change which could be considered to constitute a new entity; or

5. Change in any subcontractors with whom the provider subcontracts for the provision of medical care or supplies.

(3) If the provider or fiscal agent fails to disclose required information within the time period specified, the provider shall be terminated from participation in the Medicaid program on the day following the last day for submittal of the required information as per Section 10(3) of this administrative regulation.

Section 4. Required Provider Documentation. (1) Each provider shall maintain documentation of:

(a) Care, services or supplies provided to an eligible recipient;

(b) The patient's medical record (or other provider file, as appropriate) which shall demonstrate that the care, services, or supplies billed for, were actually performed or delivered;

(c) The medical necessity of the service performed or supplies provided; and

(d) The appropriate medical order which substantiates medical necessity.

(2) A cost based provider shall maintain all fiscal and statistical records and reports which are used for the purpose of establishing rates of payment made in accordance with Medicaid, and all underlying books, records, documentation and reports which formed the basis for the fiscal and statistical records and reports.

(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the later of:

(a) The date of final payment for services;

(b) The date of final cost settlement for cost reports; or

(c) The date of final resolution of disputes (if any).

(4) If any litigation, claim, negotiation, audit, investigation or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until the later of:

(a) The completion of the action and resolution of all issues which arise from it; or

(b) The end of the regular five (5) year period.

Section 5. Claims Processing. (1) Claim submittal.

(a) A provider shall submit a claim, using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the provision of service.

(b) A provider shall submit additional documentation for claims processing when required by the department.

(c) By submitting a claim a provider shall:

1. Be liable for the accuracy of all claims submitted by the provider, on the provider's behalf or by employees of the provider.

2. Be responsible for reviewing the statement of payment or remittance statement to assure that paid claims shown are true and correct, and for informing the department of any discrepancy.

(d) If a provider submits a claim electronically, the provider's acceptance of payment shall be considered to be the provider's certification that a paid claim is true and correct; and

(e) Any submittal of a false claim, statement or document shall be considered to be an unacceptable practice.

(2) Claim payment.

(a) Payment shall be made by the department if:

1. The information required to pay the claim is complete;

2. The provider is not under investigation for an unacceptable practice;

3. The claim is not under review for medical necessity;

4. The provider is up-to-date on all reports and information required by the department; and

5. The department is not withholding the provider's payments in accordance with Section 8 of this administrative regulation.

(b) The department may audit paid claims to determine if any unacceptable practices have occurred which may result in repayment.

Section 6. Methods for Recoupment of Overpayments. (1)(a) Medicaid overpayments. When a determination is made by the department that a provider was overpaid, a demand letter is sent to the provider.

(b) In response to the demand letter, the provider shall, within thirty (30) days:

1. Pay the amount in full; or

2. Submit a written request for a payment plan.

(2) A payment plan may be approved by the department when a provider claims that payment in full would create an exceptional undue hardship. A declaration in writing to the department of exceptional undue hardship shall include the following:

(a) Copies of financial statements which indicate payment in full within thirty (30) days would create an exceptional undue hardship; and

(b) Copies from at least two (2) financial institutions indicating the provider's loan request was denied for the overpayment amount.

(3) Payment plans shall not extend beyond a six (6) month period except as provided for in subsection (4) of this section.

(4) The department may exercise discretion and approve a payment plan in excess of six (6) months when the monthly payment exceeds twenty-five (25) percent of the provider's average monthly Medicaid payment. The average monthly Medicaid payment is based on the previous twelve (12) month's payments.

(5) All payment plans shall include provisions for payments of both principal and interest.

(6) When a provider fails to make a payment as specified in the payment plan or takes no action toward repayment, the fiscal agent contractor shall recoup the amount due from future payments. If a provider has insufficient funds available for recoupment through the fiscal agent contractor payment system in the first payment cycle following the due date, payments shall be withheld and the account will be referred to the Department of Law for collection.

(7) If a provider disputes the amount of overpayment due the agency, the provider may submit additional documentation to support its position or request a resolution meeting at which time additional documentation may be submitted.

(a) The department shall:

1. Review additional documentation within thirty (30) days of receipt;

2. Schedule a resolution meeting within thirty (30) days of receipt of the request as necessary.

(b) Within thirty (30) days from the date of receipt of additional documentation or the resolution meeting, the department shall notify the provider of the final determination.

1. If the department determines that no adjustments are required as a result of the additional documentation or the resolution meeting, the initial determination will stand.

2. If it is determined that the amount requested should be reduced, any refund due to the provider shall be refunded to the provider within thirty (30) days.

3. If it is determined that the amount requested should be increased, the additional amount due will be subject to subsection (4) of this section.

(8) Withholding Medicare payments to recover Medicaid overpayments.

(a) The cabinet may request that the Health Care Financing Administration (HCFA) hold Medicare payments to a provider in order to recover Medicaid overpayments to the provider. The requests for holding shall be accomplished in accordance with the terms and conditions specified in federal regulations at 42 USC 1395vv.

(b) Amounts held by HCFA and returned to the cabinet by HCFA (as provided for in 42 USC 1395vv) which are ultimately determined by the cabinet to be in excess of overpayments shall be returned to the provider.

(9) Statutory recovery. The cabinet shall not issue payments otherwise due a provider if withholding is ordered by a state or federal government agency or by a court for recovery of money with the payments to be held in accordance with the provisions of the order issued by the state or federal government agency or the court.

(10) Medicare overpayments. When ordered to do so by HCFA, the department shall recoup the federal share of Medicaid payments otherwise due Medicaid providers as a means to recover Medicare overpayments. The federal share of Medicaid payments is that portion of the payment funded with federal funds.

Section 7. Unacceptable Practice Detection and Investigation. (1) A preliminary investigation of alleged unacceptable practice shall be conducted by the department or its agent if:

(a) A complaint is received by the Medicaid program or other cabinet staff or upon referral from the Office of Attorney General to the cabinet; or

(b) Questionable practices are identified by the Medicaid agency or its contractors.

(2) If the findings of a preliminary investigation indicate that an incident of fraud or abuse has occurred in the Medicaid program, a referral for a full investigation shall be made to the MFCU.

(3) In order to facilitate a full investigation, the department shall, at the request of the MFCU, provide for access to, and free copies of, any records, data, or information kept by the agency, its contractors, or providers if authorized as specified in Section 4 of this administrative regulation.

(4) A full investigation shall continue until:

(a) Appropriate legal action is initiated; or

(b) The investigation is discontinued because of insufficient evidence to support the allegation of unacceptable practice; or

(c) The case is returned to the department for administrative action.

(5) At any time during a preliminary or full investigation, the department may make an administrative determination that a provider has committed an act of unacceptable practice based on receipt of reliable evidence. The commissioner of the department shall issue a written notice of a determination of unacceptable practice to the

person whom it intends to exclude or impose sanctions upon, as specified in Section 9 of this administrative regulation. The notice shall be mailed to the person's designated payment or correspondence address or last known address and shall clearly state:

(a) The determination made;

(b) The basis and specific reasons for the determination;

(c) The effect of any action to be taken;

(d) The amount of any overpayment or penalty, if any;

(e) The effective date of the action; and

(f) Information concerning any appeal right of the provider.

Section 8. Withholding of Payments During Investigation of Fraud or Willful Misrepresentation. (1) The department may withhold Medicaid payments as provided for in 42 CFR 455.23 upon receipt of reliable evidence that an incident of fraud or willful misrepresentation has occurred in the Medicaid program.

(2) The department may withhold payments without first notifying the provider of its intention to withhold payments.

(3) The department shall send notice to the provider of its withholding of program payments within five (5) days of taking the action.

(a) The notice shall set forth the general allegations of the nature of the withholding action, but may not disclose any specific information concerning its ongoing investigation.

(b) The notice shall advise the provider:

1. That payments are being withheld in accordance with this administrative regulation;

2. That withholding shall be for a temporary period;

3. Of the circumstances under which withholding shall be discontinued;

4. Of the type of Medicaid claim, as appropriate, to which withholding shall apply; and

5. Of his right to submit written evidence for consideration by the agency.

(4) The department shall not be obligated to grant a hearing request concerning any withholding of payment action under this section.

(5) Any withholding of payment action under this section shall be temporary and shall not continue after:

(a) The investigation has been discontinued due to insufficient evidence of unacceptable practice by the provider; or

(b) Legal proceedings related to the provider's alleged unacceptable practice are completed; or

(c) The matter is resolved between the agency and the provider through an administrative determination of unacceptable practice, as specified in Section 7 of this administrative regulation, which has not been appealed and which is no longer applicable due to expiration of time limits for appeals.

Section 9. Sanctions. (1) The cabinet shall impose sanctions as provided for in 1994 Ky. Acts ch. 316, sec. 9(1)(a) - (e), p. 653, and 1994 Ky. Acts ch. 96, sec. 9(1)(a) - (e), p. 185, and as provided for in Section 8 of this administrative regulation when legal proceedings against a provider have established that the provider has engaged in fraud or abuse or when an administrative determination as provided for in Section 7 of this administrative regulation establishes that the provider has engaged in an unacceptable practice.

(2) If the department sanctions a person, it may also sanction any affiliate of the person. However, the determination to sanction the affiliate shall be made during the process leading to the administrative determination of unacceptable practice, on a case-by-case basis, after full review and consideration of all relevant facts and circumstances leading to the sanction of the primary person. The affiliate shall have the same notification and due process rights as any sanctioned person.

(3) The department may hold a person responsible for the conduct of another person in the administrative determination of unacceptable practice. However, conduct may only be imputed to another if:

(a) The persons are affiliates of each other; and

(b) The conduct was accomplished within the course of the duties of the person to be sanctioned; and

1. The other person knew or should have known of the conduct; or

2. The conduct was effected with the knowledge and consent of the other.

(4) The sanction process shall include the termination of the provider from the Medicaid program and shall specify a period of exclusion. In determining the duration of exclusion, the department shall consider:

(a) The number and nature of the unacceptable practice incidents;

(b) The nature and extent of any adverse impact the violations had on recipients;

(c) The amount of damages to the program;

(d) Any mitigating circumstances;

(e) Other facts related to the nature and seriousness of the unacceptable practice; and

(f) The previous record of the person under Medicare, Medicaid and any program administered by the Cabinet for Human Resources.

(5) The sanction process shall include liability for civil payments, restitution of overpayments and agency costs as specified in 1994 Ky. Acts ch. 316, sec. 9(1)(a)-(e), p. 653, and 1994 Ky. Acts ch. 96, sec. 9(1) (a)-(e), p. 185.

(6) The cabinet shall use a lien, as specified in 1994 Ky. Acts ch. 316, sec. 11, p. 653, and 1994 Ky. Acts ch. 96, sec. 11, p. 186, to assure payment of restitution and monetary penalties imposed under the administrative determination of fraud.

Section 10. Provider Participation Termination. (1) Except as provided for in subsection (6) of this section, a provider's participation may be terminated by either the provider or the department upon thirty (30) days written notice to the other without cause.

(2) Except as provided for in subsection (6) of this section, a provider's participation shall be terminated and a period of exclusion imposed if an administrative determination is made, as set forth in Section 7 of this administrative regulation, that the provider engaged in an unacceptable practice.

(3) A provider shall provide up-to-date information in accordance with Section 3 of this administrative regulation. Except as provided for in subsection (6) of this section, failure to maintain up-to-date information, or to submit such information within thirty-five (35) days of a request by the department (except as provided for in Section 2 of this administrative regulation) shall result in automatic termination of the provider's participation.

(4) Except as provided for in subsection (6) of this section, a provider's participation shall be terminated immediately if it is found that the information provided at the time of application was incorrect, inaccurate or incomplete and where provision of correct, accurate and complete information would have resulted in the denial of the application based upon one (1) or more of the factors set forth in Section 2 of this administrative regulation.

(5) Except as provided for in subsection (6) of this section, a provider's participation shall be terminated if the provider fails or refuses to pay or enter into an agreement to pay the amount of any penalty imposed, including interest, in accordance with 1994 Ky. Acts ch. 316, sec. 9(1) (a)-(d), p. 653, and 1994 Ky. Acts ch. 96, sec. 9(1) (a)-(d), p. 185, within sixty (60) days from the date of the department's notice or the date of a hearing decision (if any).

(6) Before the participation of a nursing facility, as defined in 42 USC 1396r(a), or an intermediate care facility for the mentally retarded, as defined in 42 USC 1396d(d), is terminated, it shall have the right to receive a hearing in accordance with Section 13 of this administrative regulation and 42 CFR 431.153. A hearing conducted subsequent to this subsection shall be completed within 120 days

from the notice sent to the provider.

(7) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated if the provider fails to submit a completed and signed application within sixty (60) days from the date of the notice to provide such application.

(8) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated and a period of exclusion imposed if it is found through the judicial process that the provider engaged in an unacceptable practice.

(9) A provider's participation in Medicaid shall be automatically terminated on the date of termination or suspension from Medicare.

(10) Except as provided for in subsection (6) of this section, a provider's participation in Medicaid shall be automatically terminated as of the date of any termination, revocation or suspension of any registration, certification or license to practice a medical profession, or as required to provide medical care, services or supplies under Medicaid.

(11) Except as provided for in subsection (6) of this section, a provider's participation:

(a) Shall be terminated and a new application required if the ownership or control of the provider has substantially changed, since acceptance of its enrollment application, as follows:

1. The addition or elimination of one (1) or more partners in a provider organized as a partnership; or

2. The sale of the business or assets of any provider;

(b) May be terminated and a new application required if ownership or control of the provider has substantially changed since the acceptance of its enrollment application due to the sale or exchange of capital stock in a provider organized as a corporation; and

(c) A notice advising of the termination and of the requirements to make a new application for enrollment shall be sent to the provider thirty (30) days prior to its termination from the program.

(12) Notice of termination.

(a) A notice of termination shall be in writing and contain the following information:

1. The reason for the termination, if any; and

2. The effective date of the termination.

(b) A notice provided under subsections (8), (9), (10), and (11) of this section shall also contain the date the former provider may submit an application for reenrollment.

(c) A notice provided under subsections (1), (2), (3), (4), (5), (6), and (7) of this section shall also contain the provider's hearing rights in accordance with Section 13 of this administrative regulation.

Section 11. Terminated Provider Reinstatement. (1) A provider whose participation has been terminated under the provisions of this administrative regulation may request reinstatement in accordance with the provisions set forth in the written notice from the department as provided for in Sections 10 and 13 of this administrative regulation.

(2) A request for reinstatement shall be subject to the enrollment requirements in Section 2 of this administrative regulation. An application for enrollment under this section shall be identified by the provider as a reinstatement application.

(3) The department may only grant reinstatement for a program violation when the provider can demonstrate and assure the department that the violation which led to the sanction shall not be repeated.

(4) If the department approves the request for reinstatement, after imposition of a sanction, the department shall provide written notice to the provider and to all others who were informed of the sanction, specifying the date on which program participation may resume.

Section 12. Informal Resolution of Provider Disputes. When providers disagree with Medicaid determinations with regard to claims payment, sanctions, participation or other matters covered in this administrative regulation the provider may provide to the agency any information which the provider wishes considered in relation to the agency determination. The agency may rescind, modify or take no action with regard to the disputed issue with no written notice to the provider required. Information submitted for the purpose of informally resolving a provider dispute shall not be considered a request for an administrative appeal.

Section 13. Administrative Hearing Process. (1) The administrative hearing process shall be conducted by an impartial hearing officer appointed by the cabinet secretary.

(2) This process shall be used in the following situations:

(a) If the provider's participation is terminated with or without cause as specified in Section 10 (1), (2), (3), (4), (5), (6), and (7) of this administrative regulation; or

(b) If the agency imposes a fiscal sanction; or

(c) If the agency requires the repayment of an overpayment or restitution.

(3) An administrative hearing shall not be conducted when the provider is terminated in accordance with Section 10 (8), (9), (10), and (11) of this administrative regulation.

(4) A written request for a hearing must be received by the department within thirty (30) days of the department's notice of adverse determination. This request must be sent to the Commissioner, Department for Medicaid Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

(5) At least fifteen (15) calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their representatives. The notice shall inform them of:

(a) The date, time and place of the hearing and the parties' right to request a postponement;

(b) The manner and means by which a postponement may be requested and granted;

(c) The issues which are to be the subject of the hearing;

(d) The manner in which the hearing will be conducted;

(e) The right of each party to be represented or to represent himself, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses; and

(f) The date of the prehearing exchange between the appellant and department.

(6) A prehearing exchange of information and documents may be requested by the appellant or the department.

(7) A prehearing conference may be held at least seven (7) days in advance of the hearing date at which time each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(8) A request for a hearing shall be considered to be abandoned if the appellant does not appear at the hearing on the scheduled date and the hearing has not been rescheduled. A hearing request may be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the appellant stating that the request is withdrawn; or

(b) The appellant makes a statement on the record at the hearing withdrawing the request.

(9) If copies of the documentary evidence which the department plans to use at the hearing have not been provided to the appellant, or the appellant's representative, an opportunity to examine the documents shall be afforded the appellant upon his request. Information relating to the selection of the person for audit, investigation notes or other material which may reveal auditor investigation techniques, material prepared for submission to a law enforcement or prosecutorial agency, information concerning law enforcement investigations, or judicial proceedings or confidential sources or confidential information shall not be revealed.

(10) The hearing officer, appointed by the secretary, shall preside over the hearing and have all the powers conferred by law to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

(11) The appellant or representative, counsel or other representa-

tive of the department, an interpreter if the appellant is deaf or hard of hearing and an interpreter has been requested, witnesses for both parties, persons who may be called as witnesses by the hearing officer and other persons or members of the public as the hearing officer in his discretion may admit, are entitled to be present at the hearing. Staff of the department shall be entitled to observe or to assist the official representative of the department.

(12) The issues and documentation considered at the hearing shall be limited to issues directly relating to the adverse determination.

(a) Formal rules of evidence shall not apply.

(b) Irrelevant and unduly repetitious testimony and cross-examination shall be excluded.

(c) The appellant has the burden of showing that the determination of the department was incorrect.

(d) If the determination is based upon an alleged failure of the provider to comply with generally accepted business, accounting, professional or medical practices or standards of health care, the department shall establish the existence of such practice or standard.

(13) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.

(14) The hearing proceedings shall be recorded but not transcribed unless requested by either party. The cost of the court reporter, if utilized, and the transcription shall be the responsibility of the party making the request. If a third party requests a copy of the original transcript, the party requesting the copy shall be responsible for the cost of the copy.

(15) The hearing officer shall prepare an official report containing findings of fact based on the substance of what transpired at the hearing, and prepare a recommended decision to be forwarded to the Secretary, Cabinet for Human Resources and Commissioner, Department for Medicaid Services. The Commissioner, Department for Medicaid Services shall make the final decision based upon the findings of fact and recommendation of the hearing officer and policies of the department.

(a) A written final decision shall be issued within 120 days of the conclusion of the hearing or the closing of the record and sent to each of the parties.

(b) The decision shall determine the issues, state reasons for the determinations, and when appropriate, direct specific action.

(c) The decision is the final cabinet action and is binding upon the parties subject to appeal to the court of appropriate jurisdiction.

(d) In the letter transmitting the decision, clear reference shall be made to the availability of judicial review by either party.

Section 14. 907 KAR 1:007, Documentation of medical assistance services, 907 KAR 1:074, Claims processing, 907 KAR 1:110, Recoupment of overpayments, 907 KAR 1:220, Terms and conditions of provider participation, provider appeals, and 907 KAR 1:300, Withholding the federal share of payments to recover Medicare or Medicaid overpayments, are hereby repealed.

MASTEN CHILDERS II, Commissioner and Secretary

APPROVED BY AGENCY: July 14, 1994

FILED WITH LRC: July 14, 1994 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 22, 1994 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1994 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.

REGULATION IMPACT ANALYSIS

Agency Contact Person: Masten Childers II

(1) Type and number of entities affected: All medical providers certified to participate in the Medicaid program. 907 KAR 1:670 implements statutory requirements of HB 127 and SB 37 to insure the Medicaid program is effectively managed to significantly decrease loss of tax payors dollars resulting from fraud and abuse of the Medicaid program.

(a) Direct and indirect costs or savings to those affected:

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: No increased documentation or reporting requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First Year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Notification and reporting requirements to comply with HB 127 and SB 37.

(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:

(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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the July 1, 1994 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Friday, July 1, 1994, at 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the June 7, 1994 meeting were approved.

Present were:

Members: Representative Tom Kerr, Chairman; Senators Tom Smith, Gene Huff; Representatives Woody Allen and Jim Bruce.

Guests: Maryellen B. Allen, Secretary of State; Dave Nicholas, Occupations & Professions; Susan Stopher, Board of Accountancy; Nathan Goldman, Board of Nursing; John Phillips, Tom Young, Pete Pfeiffer, Department of Fish and Wildlife; Vicki Searcy, Department of Agriculture; John T. Smither, Martha Hall, Kay Harker, Kathryn M. Hargraves, Bob Logan, Jack Wilson, Brenda Gail Lowe, Ralph D. Schiefferle, Natural Resources and Environmental Protection Cabinet; Jack Damron, Brenda Priestley, Louis Smith, Department of Corrections; Edward Sue Perkins, Annette Coffey, H. Russell Renaud, Sandra G. Pullen, Transportation Cabinet; Delmar Dalton, Judy Tabor, David Thurmond, Michael Luscher, Kenneth W. Ison, Kevin Noland, Audry T. Carr, Department of Education; Jim Byford, Delmus Murrell, Katharine Luke, Workforce Development Cabinet; Karen Doyle, Mark Cornett, Michael Cheek, Janice Kline, Cookie Whitehouse, Cabinet for Human Resources; Mike Lynch, Ky. DES; Mike Helton, KPMA; Jan L. Gould, KRF; Dennis Conniff, MMLK; John F. Nichols, Jr., Associated Industries of Kentucky; Rusty Cress, Breeding, McIntyre & Cunningham; Kent Riggs, Ashland Oil; David Sauer, Ashland Petroleum; Greg Brotzge, Rohm and Haas; George Binder, Consulting Engineers Council of Kentucky; Mike Ridenour, Tony Sholar, Chamber of Commerce; Laura Knoth, Kentucky Farm Bureau; James E. Baker, Western Kentucky Coal Association; Allen Summers, Asmark, Inc.; Tod Griffin, Kentucky Retail Federation; William L. Quisenberry, KFACA; Jerry Deaton, Kentucky Leauge of Cities; Mollie Herrick; Anna Walker; Dorothy J. Hill; Virginia Ruckman; Pauline Lewis; Billie Jean Shepherd.

LRC Staff: Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Susan Eastman, Don Hines.

The Subcommittee determined that the following administrative regulation does not comply with statutory authority:

Transportation Cabinet: Department of Vehicle Regulation: Driver Improvement

601 KAR 13:011. Medical review board; basis for examination, evaluation, tests. Sandy Pullen appeared representing the Cabinet. This administrative regulation replaces an administrative regulation that expired April 15, 1994, due to lack of statutory authority. Ms. Pullen stated that this administrative regulation is identical to the prior expired administrative regulation. She stated that the Cabinet is working on a new administrative regulation and should be filing one soon. She said that the problem that confronts the Cabinet is that two items of legislation were passed by the 1994 General Assembly and that they conflict slightly.

Chairman Kerr stated that even though the Cabinet now has statutory authority for the Medical Review Board, this particular administrative regulation does not comply with that statutory authority. The Subcommittee approved a motion to find the regulation deficient.

The Subcommittee determined that the following administrative regulations, as amended, complied with statutory requirements:

Secretary of State: Corporations

The following four administrative regulations were amended to comply with KRS 13A.220(3)(e) to delete the citation of KRS Chapter 13A.100 as the statute authorizing the promulgation of the administrative regulation.

30 KAR 1:010. Certificates of existence or authorization; status of good standing.

30 KAR 1:020. Statements, reports and documents; filing requirements.

30 KAR 1:040. Indistinguishable names.

30 KAR 1:050. Dishonored checks.

Trademarks and Service Marks

30 KAR 3:010. Application for registration of trademarks and service marks. This administrative regulation was amended to comply with: (1) KRS 13A.110 and KRS 13A.2251(1), which require the agency to incorporate by reference and file a copy of the form entitled, "Application for Registration of a Trademark or Service Mark"; (2) KRS 13A.2251(1)(b),(c), to include a statement as to how the form may be obtained or inspected; (3) KRS 13A.2251(3) which requires that one copy of the application be filed with the regulations compiler; (4) KRS 13A.222(4), drafting requirements; and (5) KRS 13A.120(2)(e), by deleting language that repeated or summarized statutory language.

30 KAR 3:020. Application for renewal of registration. This administrative regulation was amended to comply with: (1) KRS 13A.110 and KRS 13A.2251(1), which require the agency to incorporate by reference and file the form entitled, "Application for Renewal of Registration of a Trademark or Service Mark"; (2) KRS 13A.2251(1)(b),(c) to include a statement as to how the form may be obtained or inspected by the public or interested parties; and (3) KRS 13A.2251(3) which requires that one copy of the application be filed with the regulations compiler.

30 KAR 3:030. Classification of goods and services for registration of trademarks and service marks. Section 1 of this administrative regulation was amended to comply with KRS 13A.222(4) drafting requirements.

Board of Accountancy

201 KAR 1:050. Certificate application. This administrative regulation was amended to comply with KRS 13A.120(2)(e), by deleting language that repeated statutory language found in the incorporation by reference form entitled, "Application for Certificate As a Certified Public Accountant".

201 KAR 1:063. Certificate of experience. This administrative regulation was amended to comply with KRS 13A.120(2)(e), by deleting language that repeated statutory language found in the incorporation by reference form entitled, "Certificate of Experience".

201 KAR 1:081. Firm permits to practice. This administrative regulation was amended to comply with: (1) KRS 13A.120(2)(e), by deleting language that repeated statutory language found in the incorporation by reference form entitled, "Initial Firm Registration"; and (2) KRS 13A.222(4), drafting requirements, by correcting language found in Section 3 and 4.

Board of Nursing

201 KAR 20:056. Advanced registered nurse practitioner registration, program requirements, recognition of a national certifying organization. Section 7(3) of this administrative regulation was amended to comply with KRS 13A.222(4)(a), prohibiting the use of ambiguous, indefinite, or superfluous words and phrases, and requiring plain and unambiguous words.

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners. Sections 2(7), (8) and (9) of this

administrative regulation were amended to correct punctuation.

Department of Fish and Wildlife Resources: Fish

301 KAR 1:085. Mussel shell harvesting. This administrative regulation had been reviewed by the Subcommittee at its April 1, 1992 and September 9, 1992 meetings. At these meetings, questions had been raised concerning the statutory or constitutional authority of the restriction of licenses to applicants who previously had been granted licenses, because: (1) state statutes did not permit such a restriction; (2) the restriction preferred a particular class of people or applicants, without establishing a basis for the preference; and (3) it appeared the restriction could amount to a restriction of trade.

This administrative regulation was amended to incorporate the "Mussel Transaction Report Form" by reference.

Representative Bruce stated that he had received many complaints about mussel shell harvesting in western Kentucky and asked the department to explain the amendments.

Department personnel stated that: (1) the department is making approximately 200 more licenses available to the public; (2) this will allow new applicants to receive mussel shell harvesting licenses; and (3) for the last two years, before a mussel shell harvester could receive a current year mussel shell harvester license, he was required to have been licensed in the two previous years.

In response to a question by Representative Bruce on the effect the increase in licenses would have on the fishing in the lake, Department personnel stated that: (1) there would be no adverse impact on fishing; (2) most of the changes in the administrative regulation over the last two years were the result of a mussel shell advisory group composed of members of all groups affected by mussel shell harvesting; (3) all interested groups have agreed to these changes; (4) in 1989-1990 the Department of Fish and Wildlife issued 820 mussel shell harvester licenses; (5) last year, only 320 mussel shell harvester licenses were issued; and (6) now there is room for an increase in licenses from a biological and sociological standpoint.

Chairman Kerr asked if the Department anticipated more than 500 applicants.

The Department stated that: (1) all applicants for a mussel shell harvester license must submit an application during the month of November; (2) if the number of applications received is less than 500, all applicants will be granted a license; (3) since the Department only received 320 applications last year, there will be 180 additional licenses available for potential applicants; (4) the department does not anticipate more than 25 to 50 additional license applications; and (5) if during the month of November the Department receives 550 applicants then those individuals who had a license in the previous year will be given priority.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water

Dennis Conniff, an attorney representing a small bed and breakfast, stated that: (1) 401 KAR 8:150 Section 1, Section 2(5) and 401 KAR 8:200 Section 1(4); 401 KAR 8:010 Section 1(70), (79); 401 KAR 8:020 Section 1(1); 401 KAR 8:150 Section 1, Section 2(5) and 401 KAR 8:200 Section 1(4) seek to regulate commercial facilities that serve food or drink to the public; (2) the cabinet lacks the statutory authority to regulate these facilities; (3) facilities that serve food and drink to the public are already regulated by the Cabinet for Human Resources (CHR) under express statutory authority; (4)(a) pursuant to KRS 217.125, CHR is granted authority to regulate retail food establishments; (b) pursuant to KRS 217.290, CHR is granted authority to regulate food intended for sale; and (c) pursuant to KRS 217.041, CHR is granted authority to regulate hotels and motels; (6) CHR has implemented these statutes by promulgating the: (a) Hotel and Motel Code, 902 KAR 7:010; (b) Retail Food Code, 902 KAR 45:005; and (c) Kentucky Bed and Breakfast regulation, 902 KAR 45:006; (5) CHR has the authority to establish the quality of water to be used in retail establishments, including the water used in washing of dishes and preparation of the food; and, (6) the cabinet does not have the authority to regulate the water in these establishments as public water supply systems.

Chairman Kerr stated that the cabinet: (1) has the authority to adopt administrative regulations for the purification of water for public and semipublic use; and (2) pursuant to its authority to regulate the purification of water for semipublic use, would appear to have authority to regulate the quality of water for a bed and breakfast .

Mr. Conniff responded that, while a bed and breakfast serves water to the public, CHR has been given specific authority for the regulation of small facilities that serve food and drink to the public.

Chairman Kerr: (1) pointed out that CHR requires facilities like a bed and breakfast to meet the requirement of the Natural Resources Cabinet for purification of water; and (2) asked Mr. Conniff if he believed CHR had exceeded its authority when it deferred to the Natural Resources Cabinet.

Mr. Conniff responded that: (1) CHR cannot delegate the authority for inspection of these water systems to the Natural Resources Cabinet; (2) CHR cannot adopt standards for the quality of water to be served to the public established by Natural Resources; and (3) the delegation of its authority to regulate a bed and breakfast as a water supply system governed by the Natural Resources Cabinet is impermissible.

Representative Allen asked why a bed and breakfast should be responsible for water quality when it is hooked up to a public water system.

Chairman Kerr responded that this administrative regulation relates to those bed and breakfast type facilities that use well water or spring water.

Mr. Conniff pointed out that: (1) these small facilities are potentially responsible for water quality standards for large public water systems; (2) the facility he represents is regularly inspected by the local health department for sanitation of food and their water is tested for some contaminants; (3) the Natural Resources Cabinet tests for more kinds of contaminants and tests more frequently than CHR.

In response to a question from Representative Allen, Mr. Conniff stated that: (1) if a facility is hooked up to a public water supply, the Natural Resources Cabinet would not inspect it; and (2) CHR would still inspect such a facility for sanitation and proper preparation of the food.

Senator Smith pointed out that CHR will continue to test the water of such facilities.

In response to questions from Senator Smith, Natural Resources Cabinet personnel stated that: (1) CHR does test the water periodically, but not on a regular basis; (2) Natural Resources is concerned that the water is properly monitored at regular intervals; (3) the business will pay for the testing; and (4) the cabinet is not aware of any documented cases of contamination or illness due to contamination.

Senator Smith pointed out that: (1) the state has over-regulated septic tanks and is now preparing to over-regulate water supplies; and (2) these administrative regulations will result in a requirement for more permits, more paperwork and more expense.

Cabinet personnel responded that: (1) these administrative regulations allow an individual to petition the cabinet for decreased monitoring, if it can show that the water supply is free from contamination; (2) there is: (a) no increase in fees for this monitoring; and, (b) an increase in cost for the extra testing.

In response to a question from Representative Allen, Mr. Conniff stated that: (1) the bed and breakfast he represents is regulated by the local health department; (2) the health department periodically inspects the water at the bed and breakfast; (3) the local health department does not charge for the test, which is ultimately paid by taxpayers; (4) the cabinet would require much more frequent monitoring; and (5) while the administrative regulation would allow for alternate protocols for testing, these alternate protocols are not set out in the administrative regulation.

Representative Allen: (1) asked why two separate state agencies were needed for this monitoring; and (2) stated that one agency should do the whole job while its staff is at the location.

Subcommittee staff explained that an administrative body: (1) may adopt a standard developed by another administrative body; and (2) could not delegate its duty to perform an inspection to another administrative body.

Cabinet personnel pointed out that: (1) the cabinet wants to assure that water is tested consistently; (2) if the business is a seasonal business, the facility only needs to test when it is open for business; and (3) the cabinet does not intend to harass the public, but intends to preserve the water supply.

Senator Kafoglis: (1) stated that: (a) CHR has the responsibility for inspecting food and water to make sure the food and water is not contaminated by the server; (b) the cabinet is proposing to sample the water that is being delivered to the tap; and (c) the standard for regulating a public water supply is different than the standard for regulating a private water supply; and, (2) asked if there was a concern about an increased incidence of hepatitis from a private water supply.

Cabinet personnel responded that: (1) the water supply must be monitored to protect health, not only from pathogens but also from other contaminants such as metals; and (2) CHR tests only for bacteriological contaminants, not for metals.

Representative Allen pointed out that CHR and Natural Resources need to get together and make one agency responsible for regulation of water.

The Subcommittee passed a motion to refer this matter to LRC for possible clarification of the statutory definition of "semipublic" in KRS 224.10-110(2).

401 KAR 8:010. Definitions for Title 401 Chapter 8. This administrative regulation was amended to: (1) delete small facilities that serve food and drink to the public from the definition of "public water system"; (2) include small facilities that serve food and drink to the public in the "semipublic water system" definition; and (3) define "commercial facility."

401 KAR 8:020. Public and semipublic water supplies - general provisions. This administrative regulation was amended to clarify that small facilities that serve food and drink to the public are classified as semipublic water systems.

401 KAR 8:100. Design, construction and approval of facilities. This administrative regulation was amended to delete the requirement that activated charcoal be granular.

401 KAR 8:150. Disinfection and filtration. This administrative regulation was amended to: (1) clarify that small facilities that serve food and drink to the public are classified as semipublic water systems; and (2) clarify that notification schedules be approved by the cabinet.

401 KAR 8:200. Microbiological monitoring. This administrative regulation was amended to clarify that small facilities that serve food and drink to the public are classified as semipublic water systems.

401 KAR 8:250. Inorganic chemical sampling, analytical technique and maximum contaminant level. This administrative regulation was amended to delete an inappropriate reference to Section 12(15).

401 KAR 8:500. Disinfection by-products. This administrative regulation was amended to delete Section 1(4) in its entirety.

Transportation Cabinet: Department of Vehicle Regulation: Administration

600 KAR 1:101 & E. Procurement of professional engineering and related services. Sandy Pullen was present representing the Cabinet. This administrative regulation was amended in several sections to comply with the drafting requirement of KRS Chapter 13A and to make other grammatical and technical changes.

Department of Education: Office Learning Programs Development: Office of Instruction

704 KAR 3:292. Chapter 1, ESSIA migrant education requirements. Kevin Noland appeared representing the Cabinet. In the NECESSITY AND FUNCTION section the word "school" was added to refer to the Elementary and Secondary School Improvement amendments of 1988.

704 KAR 3:401. Principal assessment centers. In Section 1 the definition of assessment center was amended to specify a location where specified procedures take place.

704 KAR 3:406. Superintendent training program and assessment process. Section 9 was added to repeal 704 KAR 3:405.

Office of Special Instructional Services: Instructional Programs

705 KAR 4:231. General program standards for secondary vocational education programs. Section 6 was amended to specify grades nine through twelve rather than grades nine and twelve. Section 14 was amended to delete the word "such" and insert in lieu thereof "the programs" to comply with the drafting requirements of KRS Chapter 13A.

Cabinet for Human Resources: Department for Social Insurance: Food Stamp Program

904 KAR 3:041. Food stamp employment and training program. This administrative regulation was amended to comply with: (1) KRS 13A.222(4)(d) & (e), requiring definitions to be placed in the first section of an administrative regulation or in a separate administrative regulation, by inserting "Voluntary quit" in Section 1(4); and (2) KRS 13A.222(4) drafting requirements.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Board of Accountancy

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

201 KAR 1:065. Individual permit fees.

201 KAR 1:096. Repeal of 201 KAR 1:080; 201 KAR 1:090; and 201 KAR 1:095.

201 KAR 1:130. Examination application procedure.

Board of Nursing

201 KAR 20:070. Licensure by examination.

201 KAR 20:240. Fees for applications and for services. In response to questions by Senator Kafoglis and Representative Bruce board personnel stated that: (1) no fees were being raised; and (2) because the nursing exam has been changed to a computerized examination that is no longer administered by the Board, the fee, formerly charged by the Board is being deleted from the administrative regulation.

201 KAR 20:370. Applications for licensure and registration.

Board of Examiners of Social Work

201 KAR 23:015. Temporary permission to practice.

Kentucky Board of Registration for Professional Geologists

201 KAR 31:010. Fees.

201 KAR 31:030. Temporary permission to practice

201 KAR 31:040. Examinations.

Department of Fish and Wildlife Resources: Game

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

Hunting and Fishing

301 KAR 3:025. License distribution and reporting.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Public Water Supply

401 KAR 8:040. Laboratory certification.

401 KAR 8:060. Variances and exemptions.

401 KAR 8:070. Public notification.

401 KAR 8:300. Lead and copper.
401 KAR 8:400. Synthetic organic chemicals.
401 KAR 8:420. Volatile organic chemicals.
401 KAR 8:440. Special testing for unregulated inorganic and synthetic organic chemicals.
401 KAR 8:600. Secondary standards.

Petroleum Storage Tank Environmental Assurance Fund Commission
415 KAR 1:114. Contractor certification.

Department of Corrections: Office of the Secretary
501 KAR 6:020. Corrections policies and procedures. Jack Damron and Judy Morris appeared representing the Department. Chairman Kerr asked Mr. Damron the content of the amendment to this administrative regulation. Mr. Damron said the amendment provides that "inmates convicted of murder, complicity to or aiding or abetting murder may be eligible for minimum custody with approval of the Commissioner". He said that leaves the possibility that individuals convicted of those specified acts may be assigned to minimum security facilities.

Anna Walker, asked if there would be any special consideration for people who have been in minimum security with good records. Mr. Damron said he thought so, that would be one of many factors. Chairman Kerr pointed out that it would not be automatic, that the Commissioner would review all the facts and consider the safety of the public. Mr. Damron replied, "exactly"

Billy Shepherd, asked if a custody score of 11 would be acceptable. Mr. Damron replied that a low custody score would be helpful and would be one of the factors. Judy Morris replied that an eleven is a minimum security score, but there is an override and a person with an eleven could possibly be sent to a minimum security facility, based on all factors.

Senator Kafoglis asked why the Cabinet was considering this change. Mr. Damron stated that the Commissioner has been considering this for a long time and believes that some people in custody might benefit from this change. Senator Kafoglis added that these were some serious crimes. Mr. Damron stated that this will be a rare exception.

Pauline Lewis, spoke on behalf of her son, Ron Lewis.

Absent a motion, Chairman Kerr stated that the administrative regulation was approved. Senator Kafoglis noted his objection.

501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:120. Blackburn Correction Complex.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers
601 KAR 1:005. Safety regulations.

Department of Highways: Right of Way
603 KAR 4:035. Logo signs; placement along fully controlled access highways. Sandy Pullen was present representing the Cabinet. Senator Smith asked if the company handling the installation of these signs is a Kentucky based entity. Ms. Pullen replied that she deals with a local office and a local phone number.

Chairman Kerr noted that the administrative regulation has a statutory problem with a difference in a definition in the administrative regulation from the definition of that phrase in the statute. Ms. Pullen replied that was because the federal government has allowed Kentucky an experimental project in which "tourist activities" has been added to the types of signs that can be displayed on an information panel, so the "specific information panel" definition has been changed.

Senator Kafoglis noted that there has been broad legislative support for this.

A motion was made and approved to refer this to LRC requesting that they refer this to the appropriate committee for possible legislation. Senator Kafoglis noted his objection.

Traffic
603 KAR 5:050. Uniform traffic control devices.

Department of Education: Office of Chief State School Officer
701 KAR 5:055. Removal hearing procedures.

Bureau of Learning Results Services: Learning Results Services
703 KAR 4:100. Grade placement of assessment program components.

Office Learning Programs Development: Office of Instruction
704 KAR 3:035. Annual professional development plan.

Office of Special Instructional Services: Facilities and Equipment
705 KAR 3:141. Area center of public high school, standards for vocational department.

Instructional Programs
705 KAR 4:041. Cooperative program standards.
705 KAR 4:051. Work experience program standards.
705 KAR 4:081. FFA leadership training center.

Workforce Development Cabinet: Department for Adult and Technical Education: General Administration
780 KAR 1:010. 1995-96 program plan.

Cabinet for Human Resources: Department for Social Insurance: Public Assistance
904 KAR 2:050. Time and manner of payments.

Food Stamp Program
904 KAR 3:025. Technical requirements.

The Subcommittee had no objections to emergency administrative regulations which had been filed.

The following administrative regulations were deferred to the August meeting, unless otherwise noted, upon request by the Subcommittee and agreed to by the promulgating agency:

Agricultural Experiment Station: (Agency Requests Deferral to August of Seed and Tobacco: Seed
12 KAR 1:111. Repeal of 12 KAR 1:110.
12 KAR 1:115. Sampling, analyzing, testing, and tolerances.
12 KAR 1:120. Noxious weed seed.
12 KAR 1:125. Identification of seed not for sale.
12 KAR 1:130. Labeling of seed mixtures.
12 KAR 1:135. Tags available for purchase from the director.
12 KAR 1:140. Permits, reports and fees for persons using own tags.
12 KAR 1:145. Registration of agricultural seed dealers, noncertified custom seed conditioners, certified seed growers, and certified seed conditioners.
12 KAR 1:150. Stop sale orders.
12 KAR 1:155. Schedule of charges for samples submitted for testing.
12 KAR 1:160. Seed not required to be labeled by variety name.
12 KAR 1:165. Germination standards for vegetable seed.
12 KAR 1:170. Germination standards for flower seed.
12 KAR 1:175. Seed certification in Kentucky.

Tobacco
12 KAR 6:010. Dealer registration.
12 KAR 6:015. Permit to label tobacco seedlings or finished tobacco plants for distribution in Kentucky, reports of sales, and payment of inspection fees.
12 KAR 6:020. Identification of tobacco seedlings or finished tobacco plants not for sale.
12 KAR 6:025. Notice of violation and stop sale.

Economic Development Cabinet: Department of Agriculture: Amusement Rides
302 KAR 16:080. Qualifications and inspection criteria for bungee

(bungy) jumping of similar apparatus permit.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:037. Groundwater protection plans. The Cabinet requested deferral of this administrative regulation to the August meeting.

Representative Bruce asked why the Cabinet requested deferral of this administrative regulation. Cabinet personnel responded that the Cabinet was working with interested parties to resolve potential problems with the administrative regulation.

In response to a question by Senator Smith, cabinet personnel stated that: (1) unlike the drinking water program, there is not a federal mandate; (2) there is a federal initiative to give states the responsibility for preparing and implementing a groundwater strategy; and (3) the groundwater administrative regulation is a part of that federal initiative.

Senator Smith stated that he: (1) was concerned there was no basis for requiring every regulated individual to prepare and implement a groundwater protection plan; and (2) had significant concerns about the administrative regulation.

Cabinet personnel responded that: (1) the administrative regulation allows a group of individuals to prepare a generic plan applying to all or part of a regulated community; or (2) each individual can prepare his own plan to meet his needs.

In response to Senator Smith's request for the specific statutory authority for these administrative regulations, Cabinet personnel stated that: (1) there are specific provision in KRS Chapter 224 that require the cabinet to protect and maintain the quality of both surface and groundwater; (2) there is not a regulatory program fully in effect for the groundwater program; (3) while this administrative regulation does not set standards or criteria for groundwater, it establishes a preventative plan to prevent the future contamination of groundwater; (4) each group or individual must look at their activities to ensure the activities do not pollute groundwater; (5) a consensus group was formed to develop a proposed administrative regulation for groundwater purification; (6) the cabinet first proposed an administrative regulation that set specific uses and standards for groundwater, which was rejected by the consensus group; and (7) the consensus group finally approved the approach that appears in this administrative regulation.

Senator Smith pointed out that: (1) agreement by a consensus group does not necessarily mean that the people living in a senator's or representative's district agree with the proposal; (2) a senator or representative represents his constituents and not a consensus group; and (3) people in his district are asking why more administrative regulations are needed.

Cabinet personnel responded that: (1) once groundwater is contaminated, it is very expensive and difficult to clean up; (2) some isolated programs exist for the protection of groundwater; (3) a significant amount of groundwater is used in rural areas; and (4) the cabinet is attempting to formulate a program to keep this groundwater from becoming contaminated.

Senator Smith stated that he his efforts to get two or three communities to band together and hook on to a sewage disposal system have been unsuccessful.

Representative Allen: (1) pointed out that the University of Kentucky completed a study that found that there was not a problem in Kentucky with groundwater contamination; and (2) asked if something had changed to alter the University study.

Cabinet personnel responded that: (1) the University of Kentucky study was limited in geographical area; (2) there is ongoing testing of groundwater; (3) some locations have periodic herbicide and nitrate contamination associated with an improper feedlot or sewage treatment plant operation; and (4) the cabinet is attempting to maintain the quality of groundwater through this administrative regulation.

Representative Bruce encouraged cabinet personnel to continue to work with the regulated community to resolve conflicts concerning the administrative regulation.

OTHER BUSINESS:

Cabinet for Human Resources: Department for Social Services: Day Care

905 KAR 2:110. Child care facility provider requirements.

905 KAR 2:120. Child care facility health and safety standards.

At its May 1994 Subcommittee meeting, Senator Smith had: (1) raised issues relating to day care enforcement and regulation of day care programs affiliated with public schools; (2) stated that school-age child care programs represent unique concerns that should be regulated separately from those programs not affiliated with or held in public school facilities; and (3) requested the Cabinet to review the overall regulatory requirements for school-age child care programs sponsored by public schools and report to the Subcommittee within two months. Cabinet representatives had agreed to review day care administrative regulations as they relate to child care programs: (1) held in public school buildings and (2) run by public school system.

The Cabinet reported to the Subcommittee that: (1) it had begun discussions with interested parties, such as the Department of Education, providers, parents and Council representatives, relating to issues raised by Senator Smith regarding child care programs and the regulation of the programs by the Cabinet for Human Resources and the Department of Education.

Michael Cheek, with the Cabinet, stated that: (1) Cabinet personnel had met with Department of Education personnel to consider drafting a new Memorandum of Understanding outlining the jurisdictional regulation of these programs by both the Cabinet and the Department; (2) the agencies plan to meet again on July 17; (3) would brief the Subcommittee and Senator Smith on their progress; and (4) upon completion of the Memorandum, would provide the Subcommittee with a copy of the agreement.

Senator Smith thanked the Cabinet representative and stated that he would look forward to the review.

Transportation Cabinet

Uninsured motorists. Senator Smith stated that: (1) insurance costs are higher in Kentucky, which mandates insurance coverage, than in states like Tennessee that do not mandate insurance coverage; and (2) when stickers were required, the police could easily determine whether the driver had insurance.

Cabinet personnel stated that: (1) mandatory reporting by insurance companies to the Cabinet of cancelled policies does not provide information on whether a person had obtained insurance; (2) this requires the Cabinet to notify the person that he must provide proof of insurance; (3) the notice often is ignored by the recipient; (4) county attorneys are notified of those who do not have insurance, and among those are those who failed to respond to the Cabinet's notice; (5) the Cabinet would like to require insurers to notify it of policies issued, as well as those cancelled; (6) legislation to require this has failed during the last three Regular Sessions of the General Assembly; and (7) legislation enacted during the 1994 Regular Session includes requiring proof of insurance on purchase of a vehicle, and on inspection of a vehicle brought into the state.

Senator Smith stated that, while insurers objected to providing the Cabinet with policies issued because they do not want to divulge the information to their competitors, their competitors can obtain the information at the county clerk's office.

In response to a question by Representative Allen, Cabinet personnel stated that many buy insurance only to have it when their car is registered, after which they allow the insurance to expire, or cancel it. Representative Allen stated that: (1) a requirement for payment in advance of a year's premium was not possible; and (2) a

sticker requirement would not solve the problem, since the sticker could be left on the whole year, even if the next due premium had not been paid.

Chairman Kerr stated that: (1) unless one admits it, there is no way to prove that someone does not have insurance; and (2) a law making failure to produce a proof of insurance care prima facie evidence that one did not have insurance was not enacted. Cabinet personnel stated that the law providing for withdrawal of driving privilege was changed from being automatic on first to being automatic on second conviction.

The Subcommittee approved a motion to request LRC to refer this issue to the appropriate legislative subcommittee for recommendations to the next Regular Session of the General Assembly.

Department of Education

Earthquake Preparedness for Schools (KRS 158.163) Questions had been raised concerning the implementation of KRS 158.163, "Earthquake emergency procedure system". In response to a question by Senator Smith, Subcommittee staff and Department personnel stated that there were no administrative regulations on earthquake preparedness. Senator Smith stated that: (1) he had been; informed of forms for earthquake preparedness projects at schools that had been rejected as insufficient a number of times; (2) what appeared to be the method of implementation of KRS 158.163: (a) would cost the school systems a great deal of money; and (b) was contrary to the statute which granted authority over the program to each local school district, not to any state agency such as DES; (3) many of the local school districts mistakenly believed that DES: (a) had been granted authority over the program; and (b) was required to approve local school board actions; and (4) many of the requirements DES sought to impose, such as the storage of a great quantity of water per student or person, were expensive, onerous, and impossible to meet.

Department personnel concurred that the local school districts had been granted authority over the implementation of KRS 158.163. DES personnel stated that: (1) because many school boards would not know how to meet the requirements of the law, DES and the Department started a program to assist the boards to understand how to prepare for earthquakes and meet the requirements of KRS 158.163; (2) DES would review and comment on the plans developed by the local boards; and (3) KRS 158.163 did not grant authority over the program to DES, whose authority is limited to advice.

DES personnel stated that: (1) local boards were aware they were granted authority under KRS 158.163; (2) programs were expanded to include all types of disaster; (3) Kentucky schools are unprepared for disasters that might occur; (4) earthquake preparedness plans will cost; (5) of the approximately 1,800 schools of the Commonwealth, only 800 sent in a plan for review; (6) DES limited itself to a review of submitted plans, and local boards were aware that the DES recommendations on submitted plans were not binding; (7) Kentucky had a great number of faults that could cause earthquakes; and (8) the safety of school children requires disaster planning. Senator Smith recommended that preparedness plans and training should give priority to likely disasters, such as tornadoes.

The Subcommittee adjourned at 12 noon until August 10, 1994 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.

SENATE COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of June 17, 1994

The Senate Committee on Appropriations and Revenue met Friday, June 17, 1994, and reviewed Revenue Cabinet administrative regulation 103 KAR 18:120, relating to security for compliance; bonds. The committee took the following action:

The committee determined that administration regulation 103 KAR 18:120, previously found deficient by the committee during quadrennial review and amended by the Administrative Regulation Review Subcommittee to correct statutory citations, now complies with the provisions of KRS Chapter 13A.

HOUSE COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of June 17, 1994

The House Committee on Appropriations and Revenue met Friday, June 17, 1994, and reviewed Revenue Cabinet administrative regulation 103 KAR 18:120, relating to security for compliance; bonds. The committee took the following action:

The committee determined that administration regulation 103 KAR 18:120, previously found deficient by the committee during quadrennial review and amended by the Administrative Regulation Review Subcommittee to correct statutory citations, now complies with the provisions of KRS Chapter 13A.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of July 13, 1994

The Interim Joint Committee on Transportation met on Wednesday, July 13, 1994 and submits this report:

The Committee amended Section 2 of 601 KAR 1:005 - Safety Regulations for Motor Carriers in Subsection (3) by deleting "November 9, 1992" and inserting "June 17, 1994"; and Subsection (4) by deleting "January 20, 1994" and inserting "June 17, 1994"; and Subsection (5) by deleting "March" and inserting "June". The Committee determined that the following regulations complied with KRS Chapter 13A:

600 KAR 1:101 & E: Procurement of Professional Engineering and Related Services
601 KAR 1:005 (As Amended): Safety Regulations for Motor Carriers
603 KAR 4:035: Logo Signs
603 KAR 5:050: Uniform Traffic Control Devices

The Committee did not act on 601 KAR 13:011 and E because they had already been found deficient by the Administrative Regulation Review Subcommittee.

The Committee adjourned at 4:05 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **B2**

The Locator Index lists all regulations published in VOLUME 21 of the Administrative Register from July, 1994 through June, 1995. 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 20 are those regulations that were originally published in the Volume 20 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1994 bound Volumes were published.

KRS Index **B10**

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 21 of the Administrative Register.

Subject Index **B18**

The Subject Index is a general index of regulations published in VOLUME 21 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	21 Ky.R Page No.	Effective Date

VOLUME 20

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal, whichever occurs first)

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12 KAR 1:125E	3166	5-13-94
12 KAR 1:130E	3167	5-13-94
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415 KAR 1:114E	2962	4-8-94
501 KAR 6:130E	2774	3-14-94
Replaced	2889	6-2-94
600 KAR 1:101E	3175	4-15-94
601 KAR 13:011E	3184	4-15-94
815 KAR 45:025E	2964	4-14-94
Replaced		7-7-94
903 KAR 5:290E	2970	3-28-94
Replaced	2914	6-2-94
903 KAR 5:391E	2971	3-28-94
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